



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: July 7, 2004***

### **SUBDIVISION APPLICATION SD-04-06: SAN PEDRO-DICONZA**

**RECOMMENDED ACTION(S):** Take no action, thereby concurring with the Planning Commission's decision regarding approval of the subdivision map.

**EXECUTIVE SUMMARY:** A request for approval of a eight lot tentative vesting map for the 32-unit San Pedro Villas project located on the northeast corner of Butterfield Boulevard and San Pedro Avenue. The overall project site is 6.6 acres. The proposed vesting tentative map will be for eight lots on the 35,001 sq. ft left over portion of the project. The lots as proposed meet the applicable city standards and the overall lot layout and circulation is consistent with the approved RPD.

In May 2003, the San Pedro Villas project received a residential building allotment for nine units for FY 2004-2005, seven units for FY 2005-2006, and eight units for FY 2006-2007. The Commission approved the tentative subdivision map for 24 lots January 2004 and the Council approved the Development Agreement for 24 units March 2004.

In March, the Planning Commission completed a supplemental RDCS distribution and allocated eight additional units for FY 2004-2005 and moved up the eight allocations for FY 2006-2007 to FY 2005-2006. Now, the project has 17 allocations for FY 2004-2005 and 15 allocations for FY 2005-2006. The applicant is applying for tentative map of eight lots. In addition, the applicant is amending the development agreement to reflect the changes in the allocations and the phasing of the project.

This application was reviewed by the Planning Commission at their June 8 meeting, at which time the Commission voted 6-0, approving the request. The Planning Commission resolution, conditions of approval, and subdivision map are attached. The staff report for the subdivision is attached to the development agreement request within this same agenda.

**FISCAL IMPACT:** None. Filing fees were paid to the City to cover processing of this application.

**Agenda Item # 1**

**Prepared By:**

**Associate Planner**

**Approved By:**

**Planning Manager**

**Submitted By:**

**City Manager**



***CITY COUNCIL STAFF REPORT***  
***MEETING DATE: JULY 7, 2004***

**AMENDED RIGHT-OF-WAY PURCHASE AGREEMENT FOR  
TENNANT AVENUE WIDENING (APN: 817-04-002)**

**RECOMMENDED ACTION:** Approve amended purchase price and authorize City Manager to execute purchase agreement, subject to approval as to form by City Attorney, with the owner of APN 817-04-002 for total compensation of \$102,000 plus escrow and closing costs for the acquisition of portions of this property.

**EXECUTIVE SUMMARY:** As Council is aware, staff has been working on acquiring right-of-way for the widening of Tennant Avenue since August 2002. There were a total of seven properties which needed to be acquired prior to construction. Thus far, agreements have been reached for six properties including the subject property.

On May 5, 2004 council approved final compensation of \$95,000 plus escrow and closing fees for this acquisition. Subsequent to the Council action, the City received a letter requesting a revised amount from the property owner's representative increasing the final compensation to \$102,000.

Staff recommends approval of the revised final compensation in the amount of \$102,000.

**FISCAL IMPACT:** This project is fully funded in the current fiscal year, CIP project #507B99.

**Agenda Item #2**

**Prepared By:**

**Associate Engineer**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**

<b>EXHIBIT A</b>				
<b>PROPERTY APN #</b>	<b>PROPERTY OWNER</b>	<b>PURCHASE AMOUNT</b>	<b>ESCROW &amp; TITLE INSURANCE COSTS</b>	<b>TOTAL</b>
<b>817-04-002</b>	<b>ROBERT &amp; TERESITA CARRASCO</b>	<b>\$102,000</b>	<b>\$3,000</b>	<b>\$105,000</b>



***CITY COUNCIL STAFF REPORT***  
***MEETING DATE: JULY 7, 2004***

***CONDOMINIUM PARCEL MAP APPROVAL FOR RAR  
CONSTRUCTION***

**RECOMMENDED ACTION(S):**

- 1) Approve the Condominium Parcel Map, including the abandonment of a storm drain easement and temporary turnaround easement on the property.
- 2) Authorize the recordation of the map.

**EXECUTIVE SUMMARY:**

The commercial condominium subdivision is located at the end of Adams Court on the north side of Cochrane Road (see attached location map). The map shows the elimination of both a storm drain easement and a temporary turnaround easement on the property. The easements are no longer needed now that the site is fully developed. Therefore, staff recommends that the City Council approve the abandonment of these easements

The developer has completed all the conditions specified by the Community Development Director in the approval of the Tentative Map on November 10, 2003.

The developer has furnished the City with the necessary documents to complete the processing of the Parcel Map and has made provision with a Title Company to record Parcel Map.

**FISCAL IMPACT:**

Development review for this project is from development processing fees.

**Agenda Item # 3**

**Prepared By:**

**Senior Engineer**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *July 7, 2004*

### **PUBLIC WORKS MAINTENANCE AGREEMENTS FOR FY 2004-2006**

#### **RECOMMENDED ACTION(S):**

1. Approve new maintenance agreements for: <sup>1</sup>Striping and Signing, <sup>2</sup>Traffic Signal Maintenance, <sup>3</sup> Tree Pruning, <sup>4</sup> Laboratory Services for Potable Water Sampling and Analysis, and <sup>5</sup>City-wide Landscape Services.
2. Authorize the City Manager to execute the agreements on behalf of the City.

**EXECUTIVE SUMMARY:** Request for Proposal processes were held to award new contracts for Maintenance Services. The current contracts end on June 30, 2004. Staff recommends approval of new two year contracts as follows:

1. Striping and Signing: Chrisp Company provided the only bid for Annual Striping and Signing. Chrisp has provided excellent service for the City in the past. Staff recommends approval of this contract based upon the rates submitted. (\$35,000/yr, 2 years)
2. Traffic Signal Maintenance: Signal Maintenance provided the low bid for Traffic Signal Maintenance. Staff recommends approval of this contract based upon the rates submitted. (\$50,000/yr, 2 years)
3. Tree Pruning: West Coast Arborists, Inc. provided the low bid for Annual Tree Pruning Services. Staff recommends approval of this contract based upon the rates submitted. (\$65,000/yr, 2 years)
4. Laboratory Services for Potable Water Sampling and Analysis: Monterey County Consolidated Chemistry Laboratory provided the only bid for Laboratory Services. Staff recommends approval of this contract based upon the rates submitted. (\$145,000/\$99,000 2 years)
5. City-wide Landscape Services: Commercial Environmental Landscape (CEL) provided the low bid for landscape services of our City Parks, Fox Hollow-Murphy Springs Landscape and Lighting District Maintenance Sub-areas, and Arterial Medians. Staff recommends approval of this contract based upon the rates submitted. (\$61,500/yr, 2 years)

**FISCAL IMPACT:** Funding exists for the first year of these agreements in the FY 2004-05 budgets of the Water, Streets, Parks, and Landscape & Lighting District Divisions.

**Agenda Item #4**

**Prepared By:**

**Management Analyst**

**Approved By:**

**Department Director**

**Submitted By:**

**City Manager**



# Memorandum Public Works Department

**DATE:** July 1, 2004

**TO:** Jim Ashcraft, Public Works Director

**FROM:** Louise A. Eichhorn, Management Analyst

**SUBJECT:** FUNDING SOURCES FOR PUBLIC WORKS MAINTENANCE AGREEMENTS

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The following are account numbers identifying funds for our recommended FY 04-05 Budget to fund the attached maintenance contracts.

	Account Number	Allocation	Total Cost/Term
1. Chrisp Company	202-42231-6100	\$35,000	\$30,000/year (2 year contract)
2. Signal Maintenance	202-42231-6100	\$50,000	\$50,000/year (2 year contract)
3. West Coast Arborists	010-42231-5440 202-42231-6100	\$5,000 \$60,000	\$65,000/year (2 year contract)
4. Monterey County Consolidated Chemistry	650-42231-5710	\$145,000	\$145,000 1 <sup>st</sup> year/\$99,000 2 <sup>nd</sup> year (2 year contract)
5. Commercial Environmental Landscape (CEL)	010-42231-5440 220-42231-6100 229-42231-8351	\$1,650 \$11,220 \$48,510	\$61,500/year (2 year contract)



## **CITY COUNCIL STAFF REPORT**

**MEETING DATE:** *July 7, 2004*

### **AWARD OF DEWITT SEWER REPLACEMENT PROJECT**

#### **RECOMMENDED ACTION(S):**

1. Award contract to Pacific Underground Construction, Inc. for the construction of the Dewitt Sewer Project in the amount of \$410,025.
2. Authorize expenditure of construction contingency funds not to exceed \$41,000.

**Agenda Item # 5**

**Prepared By:**

**Assistant Engineer**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**

#### **EXECUTIVE SUMMARY:**

The scope of work for this project includes the excavating and installing of approximately 2800 lineal feet of PVC (SDR 26) sanitary sewer pipe on Alkire and Dunne Avenue between DeWitt Avenue and Peak Avenue, including all trenching, backfilling, and pavement repair associated with installation, installing manholes, abandoning existing sewer lines, connecting existing service laterals to new sewer line, and other miscellaneous work.

The bid opening was held on May 19, 2004 and the bids received are as listed below. The low bidder has many years of experience in underground utility work and has previously performed work for the City of Morgan Hill. Staff recommends award of the contract to Pacific Underground Construction, Inc. This project is scheduled to begin in August, 2004 and be completed by October, 2004. Pacific Underground Construction Inc.'s bid was 4% lower than the engineer's estimate of \$428,000.

Pacific Underground Construction Inc.	\$410,025
McGuire and Hester	\$433,000
Preston Pipeline	\$503,873

**FISCAL IMPACT:** The total contract cost for this project is \$451,025, which includes a 10% contingency of \$41,000. The project is funded in the 2004-2005 Capital Improvement Program budget under Sanitary Sewer Rehabilitation, Project #302093.



**CITY COUNCIL STAFF REPORT**  
**MEETING DATE: July 7, 2004**

**AWARD OF CONTRACT TO PROVIDE PUBLIC WORKS  
INSPECTIONS ON AN AS-NEEDED BASIS**

**RECOMMENDED ACTION(S):**

1. Approve a Professional Services Contract with Testing Engineers, Inc. (TEI) to provide public works inspection services on an as-needed basis at a not-to-exceed cost of \$90,000 for FY 04-05.
2. Authorize the City Manager to execute the contract, subject to review and approval from the City Attorney.

**EXECUTIVE SUMMARY:** As in the past years, public improvement construction has continued at a high level of activity. As a result, the requests for engineering and inspection services also remain high. This first agreement will provide for contract public works inspections on an as needed basis to ensure that all public improvements associated with development and CIP projects are installed properly and that delays in the construction projects are minimized.

TEI was selected due to their ability to provide services that other inspection companies were unable to provide, namely compaction testing and daily public works related inspections. Furthermore, TEI has a certified soils, asphalt and concrete laboratory to assist the inspectors with complicated field conditions related to the installation of improvements in the public right-of-way. The final cost was negotiated to include inspection services and the use of a specialized soils compaction gauge. TEI has been providing these services on a contract basis for the past four years.

The contract inspectors will be used during the times of high construction activity. The funds to pay for these services will be collected from the fees paid for land development processing or from budgeted CIP project accounts. During the slower construction months, the inspections will be handled solely by full-time Public Works Inspectors.

**FISCAL IMPACT:** The cost for the contract inspection services is \$90,000 and will be funded from FY 04/05 Contract Services sub-account in the Public Works Community Development Engineering and Public Works Capital Improvement Program accounts. The contract costs are split with 50% assigned to Fund 206-42231-5410 and 50% assigned to Fund 745-42231-8280.

**Agenda Item # 6**

**Prepared By:**

\_\_\_\_\_  
**Deputy PW Director -  
Engineering**

**Approved By:**

\_\_\_\_\_  
**Public Works Director**

**Submitted By:**

\_\_\_\_\_  
**City Manager**





## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: July 7, 2004***

**Agenda Item # 7**

**Prepared By:**

\_\_\_\_\_  
**HR Director**

**Submitted By:**

\_\_\_\_\_  
**City Manager**

### **RESOLUTION ADOPTING THE CITY'S FLEXIBLE BENEFITS PLAN – SUMMARY PLAN DESCRIPTION AND PLAN DOCUMENT AS AMENDED AND RESTATED ON JANUARY 1, 2004**

#### **RECOMMENDED ACTION(S):**

Adopt the City of Morgan Hill's amended Cafeteria Plan: Summary Plan Description and Plan Document effective January 1, 1997, as Amended and Restated effective January 1, 2004.

#### **EXECUTIVE SUMMARY:**

Effective January 1, 1997 the City of Morgan Hill established a Cafeteria Plan (the "Plan") for its employees for purposes of providing eligible employees with the opportunity to choose from among the fringe benefits available under the Plan. The Plan is intended to qualify as a cafeteria plan under the provisions of Internal Revenue Code Section 125. The plan offers employees the ability to voluntarily create medical care and/or dependent care reimbursement account(s). Participation in the program allows an employee's contributions to be treated as pre-tax withholding, reducing the employee's income tax liability.

Until the end of 2003, the City contracted with Employee Benefits Services (EBS) to administer the Health Care Spending Account (HCSA) and the Dependent Care Spending Account (DCSA) on behalf of the City. The City has now entered into a contract with Creative Benefits, Inc. (CB) to administer the Cafeteria Plan. In taking over the administration of the Plan, CB reviewed and updated the Summary Plan Document and Plan Description. The Amended Plan needs to be adopted by the City Council by resolution.

**FISCAL IMPACT:** None. The cost of the contract with Creative Benefits, Inc. is included in the annual budget.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF MORGAN HILL ADOPTING AMENDMENT  
TO ITS FLEXIBLE BENEFITS CAFETERIA PLAN**

**WHEREAS**, the City Council of the City of Morgan Hill wishes to adopt a cafeteria plan within the context of Section 125 of the Internal Revenue Code for the benefit of eligible employees of the City; and

**WHEREAS**, the City desires to amend the Plan to conform with current government regulations.

**NOW THEREFORE, BE IT RESOLVED, THAT,**

1. The City hereby accepts the Amended and Restated Plan Document and Summary Plan Description; AND

2. The City Manager or his designee may, without a further resolution, execute the Adoption Agreement and any related documents or amendments which may be necessary or appropriate to adopt the plan or maintain its compliance with applicable federal, state and local law.

**PASSED AND ADOPTED** by the City Council of Morgan Hill at a Regular Meeting held on the 7<sup>th</sup> Day of July, 2004 by the following vote.

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**🦉 CERTIFICATION 🦉**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on July 7, 2004.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: July 7, 2004***

**TITLE      APPROVAL OF RESOLUTION ADOPTING  
AMENDMENTS TO DEFERRED COMPENSATION PLAN  
WITH HARTFORD LIFE INSURANCE COMPANY**

**RECOMMENDED ACTIONS:**

1.      Adopt Resolution.

**EXECUTIVE SUMMARY:**

On December 10, 2003, the City Council adopted Resolution 5748 which enacted amendments to our deferred compensation plan with Hartford Life Insurance Company. These amendments were intended as good faith compliance with the requirements of the final Treasury regulations issued in July 2003.

We have been notified by Hartford Life Insurance Company that, due to an administrative error, they provided the City with incorrect language describing the required plan amendments. They have since provided us with the correct language to enact the required amendments. This language has been incorporated into the following resolution.

**FISCAL IMPACT:**

The fiscal impact of this resolution falls within the City Council's parameters.

**Agenda Item # 8**

**Prepared By:**

\_\_\_\_\_  
**HR Director**

**Submitted By:**

\_\_\_\_\_  
**City Manager**

## RESOLUTION NO. \_\_\_\_\_

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADOPTING AMENDMENT TO DEFERRED COMPENSATION PLAN WITH HARTFORD LIFE INSURANCE COMPANY

**WHEREAS**, the City provides a Deferred Compensation Plan (“Plan”) for its employees pursuant to Section 457 of the United States Internal Revenue Code; and

**WHEREAS**, the Plan is administered through Hartford Life Insurance Company; and

**WHEREAS**, the City desires to amend the Plan to conform with the final Treasury regulations issued in July 2003;

**WHEREAS**, this amendment is intended as good faith compliance with the requirements of the regulations; and

**WHEREAS**, this amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment.

**NOW THEREFORE, BE IT RESOLVED**, that, effective as indicated herein, the City hereby amends the Plan as follows:

*A. replacing section 2.3 with the following:*

#### **“2.3 Agreement Effective Date**

In general, an Employee must complete and file with the Employer a Participation Agreement prior to the month deferrals begin. Notwithstanding this requirement, the Employer may establish a cutoff date for receiving Participation Agreements as long as the cutoff is no later than the deadline provided in section 1.457-4(b) of the final 457 regulations and the cutoff date is applied in a nondiscriminatory manner. Thereafter, during each month in which the Employee is a Participant in the Plan, that portion of his said Compensation which is specified by the Employee in the Participation Agreement, shall be deferred and paid in accordance with the provisions of this Plan.”

*B. deleting the following portion of section 2.6 and renumbering section 2.6(d) and 2.6 (e) as 2.6 (c) and 2.6 (d) respectively:*

“(c) The pre-retirement catch-up provision may not be used during the calendar year that the Participant ceases to be an Employee.”

*C. replacing section 4.2, 7.2 and 7.3 with the following:*

#### **“4.2 Unforeseeable Emergency Distribution**

A Participant may apply for a lump sum withdrawal of funds from the Plan in the event of an unforeseeable emergency. The Employer will evaluate the request for conformity with

its interpretation of the applicable regulations. The decision of the Employer concerning whether an unforeseen emergency exists shall be final.

An unforeseeable emergency is a severe financial hardship of the Participant or Beneficiary resulting from an illness or accident of the Participant or Beneficiary, the Participant's or Beneficiary's spouse, or the Participant's or Beneficiary's dependent (as defined in Code section 152(a)); loss of the Participant's or Beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or beneficiary.

Examples of unforeseeable emergencies include (1) imminent foreclosure of or eviction from the Participant's or Beneficiary's primary residence, (2) the need to pay for medical expenses (including non-refundable deductibles), as well as for the cost of prescription drug medication and (3) the need to pay for the funeral expenses of a spouse or a dependent (as defined in Code section 152(a)). Note that the purchase of a home and the payment of college tuition are typically not unforeseeable emergencies.

The Participant must satisfy the Employer that the facts and circumstances of his or her situation fall within the definition of unforeseeable emergency. A distribution on account of an unforeseeable emergency may not be made to the extent the emergency is or may be relieved through reimbursement or compensation from insurance or otherwise by liquidation of the Participant's assets (to the extent liquidation would not itself cause several financial hardship) or by cessation of deferrals under the Plan.

## **7.2 Transfers In**

All or a portion of an Employee's benefit may be transferred from an Eligible Deferred Compensation Plan maintained by another eligible government employer and credited to the Participant's Account under this Plan as long as the transferor plan provides that such transfer can be made and

- a) the transfer is made from a plan of another employer and the Employee has severed employment with such other employer; or
- b) the transfer is made between eligible governmental plans sponsored by the Employer; or
- c) the entire plan's assets are transferred from another eligible governmental plan in the same state.

As it deems necessary, the Employer may require such documentation from the transferor plan to effect the transfer, to confirm that such plan is an Eligible Deferred Compensation Plan within the meaning of Code Section 457(b) and to ensure that transfers are provided for under such plan.

The Employer may refuse to accept a transfer in the form of assets other than cash, unless the Employer agrees to hold such other assets in trust under the Plan.

Any amounts transferred that have been deferred during the current calendar year will be considered deferrals subject to current calendar year deferral limitation.

If a transfer, occurring on or after January 1, 2002, is associated with a distributable event and the Employee is eligible to receive an eligible rollover distribution as defined in Section 402(c)(4) of the Code, such transfer will be considered a Rollover Contribution subject to the provisions of Section 2.8.”

### **7.3 Transfers Out**

All or a portion of a Participant Account may be transferred to an Eligible Deferred Compensation Plan maintained by another eligible governmental employer as long as the transferee plan provides that such transfer can be made and

- a) the transfer is made from a plan of another employer and the Employee has severed employment with such other employer; or
- b) the transfer is made between eligible governmental plans sponsored by the Employer; or
- c) the entire plan’s assets are transferred from another eligible governmental plan in the same state.

Upon the completion of such transfer, the Plan and Employer are discharged of any liability to the Participant to pay amounts so transferred.

As it deems necessary, the Employer may require such documentation from the other plan to effect the transfer, to confirm that such plan is an Eligible Deferred Compensation Plan within the meaning of Code Section 457(b) and to assure that transfers are provided for under such plan. Such transfers shall be made only under such circumstances as are permitted under Code Section 457 and the applicable regulations.”

**PASSED AND ADOPTED** by the City Council of Morgan Hill at a Regular Meeting held on the 7<sup>th</sup> Day of July, 2004 by the following vote.

<b>AYES:</b>	<b>COUNCIL MEMBERS:</b>
<b>NOES:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSTAIN:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSENT:</b>	<b>COUNCIL MEMBERS:</b>

**🏛️ CERTIFICATION 🏛️**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Resolution No. , adopted by the City Council at a Regular Meeting held on July 7, 2004.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: JULY 7, 2004***

**Agenda Item #9**

**Prepared By:**

**Deputy City Clerk**

**Approved By:**

**City Clerk**

**Submitted By:**

**City Manager**

### **ADOPT ORDINANCE NO. 1679, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT AND THE APPROVAL OF A PRECISE DEVELOPMENT PLAN FOR PHASE 6 OF THE CAPRIANO/MADRONE CROSSING DEVELOPMENT. THE RESIDENTIAL DEVELOPMENT PLAN COVERS A 68 ACRE SITE LOCATED ON THE WEST SIDE OF MONTEREY ROAD, SOUTH SIDE OF TILTON AVENUE, ON THE EAST SIDE OF HALE AVE. (APN's 764-09-005, 006, 007, 008, 009, 010 & 014) (APPLICATION ZA-04-01: HALE-GLENROCK BUILDERS)**

### **RECOMMENDED ACTION(S):**

**Waive** the Reading, and **Adopt** Ordinance No. 1679, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

### **EXECUTIVE SUMMARY:**

On June 16, 2004, the City Council Introduced Ordinance No. 1679, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

### **FISCAL IMPACT:**

None. Filing fees were paid to the City to cover the cost of processing this application.



## **ORDINANCE NO. 1679, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT AND THE APPROVAL OF A PRECISE DEVELOPMENT PLAN FOR PHASE 6 OF THE CAPRIANO/MADRONE CROSSING DEVELOPMENT. THE RESIDENTIAL DEVELOPMENT PLAN COVERS A 68 ACRE SITE LOCATED ON THE WEST SIDE OF MONTEREY ROAD, SOUTH SIDE OF TILTON AVENUE, ON THE EAST SIDE OF HALE AVE. (APN's 764-09-005, 006, 007, 008, 009, 010 & 014) (APPLICATION ZA-04-01: HALE-GLENROCK BUILDERS)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.

**SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

**SECTION 3.** An environmental initial study has been prepared for this application and has been found complete, correct and in substantial compliance with the requirements of the California Environmental Quality Act. A Mitigated Negative Declaration has been filed.

**SECTION 4.** The City Council finds that the proposed precise development plan is consistent with the criteria specified in Section 18.12.060 and Chapter 18.18 of the Morgan Hill Municipal Code.

**SECTION 5.** The City Council hereby approves of a precise development plan for phase 6 only as contained in that certain series of documents date stamped June 1, 2004, on file in the Community Development Department, entitled "Glenrock Vesting Tentative Map and Site Development plan" prepared by MH Engineering. These documents, as amended by site and architectural review, show the location and sizes of all lots in this development and the location and dimensions of all proposed buildings, vehicle and pedestrian circulation ways, recreational amenities, parking areas, landscape areas and any other purposeful uses on the project.

**SECTION 6.** The requirements and specifications of this ordinance repeal and replace the plans and requirement of Ordinance 1572.

**SECTION 7.** The following conditions shall be applied to all phases of the project:

1. An open space buffer of 100 ft. shall be established between the residential uses and the railroad.
2. Residential development shall be done in a manner which will minimize the need for sound walls. Such development methods would include units fronting or facing noise sources, frontage roads or the use of earth berms. 3. The average and median lot size of the single family detached homes (excluding any condominium or duets) shall be 12,000 sq. ft. for the over all 59.95 acre single-family R-1 12,000 development area.
4. The maximum number of homes (excluding the 8.25 acres of multi family) shall be 165 units. The maximum number of condominium units with the entire project shall be 16. The maximum number single family detached units shall be 138. And the minimum number of duet units (located out side of the condominium area) shall be 8. The maximum number of BMR units on Saffron Dr. shall be 10. The maximum number of moderate rate units on Saffron Dr. shall be 4.
5. A minimum of 5 acres of park/open space area shall be provided within the overall development.
6. A minimum of 20,000 sq. ft. of the R-1 12,000 area shall be utilized as a nursery or preschool facility. The school facility shall be located on lots 1 & 2 of the May 31, 2002 site plan within application ZA 00-05. Elimination of this requirement shall not be considered by the Planning Commission and City Council until one year from the date of the issuance of the last building permit for the last residential unit within the entire RPD. The applicant must also show at that unsuccessful attempts have been made in obtaining a developer/operator for the childcare facility.
7. The single family lots within the R-2 area shall be a minimum of 9,000 sq. ft. The units proposed on the single family lots shall be review and approved by the Planning Commission and City Council as a future RPD amendment processed concurrent with the subdivision of the R-2 area.
8. All Below Market Rate BMR, units proposed within the multi-family area of the project shall be of similar product type and density.
9. All public streets shall meet City requirements with the exception of Saffron Dr. which can be completed at a 54 ft. wide right of way.
10. Fifteen percent of the units shall be single story.

11. Modified detached units may only be considered for the 2004-05 allotments. All future BMR's, Moderate and R-2 units shall be attached.
12. All RDCS scoring category point totals shall not change.
13. Ten percent of the moderate rate units shall be located within the R-1 12,000 area.
14. Less than 25 percent of the units within the R-2 area can be detached. The 25 percent calculation shall include the 9000 sq. ft. lots.
15. No further subdivision of the 67-acre Capriano/Glenrock site will be processed or approved until all remaining R-1 12,000 & R-2 area is included within an approved precise development plan.
16. Any lot size modifications included with this phase (24 lot phase 6/2004-05 allotments) that causes the project to fall below the 12,000 sq. ft. lot average and median zoning requirement will be made up for in future phases.
17. In addition to the four moderate rate units provided in phase 6, three additional moderate rate units shall be accommodated within R-1 12,000 area of the project.

**SECTION 8.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 9.** Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 16<sup>th</sup> Day of June 2004, and was finally adopted at a regular meeting of said Council on the 7<sup>th</sup> Day of July 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

<b>AYES:</b>	<b>COUNCIL MEMBERS:</b>
<b>NOES:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSTAIN:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSENT:</b>	<b>COUNCIL MEMBERS:</b>

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**Irma Torrez, City Clerk**

\_\_\_\_\_  
**Dennis Kennedy, Mayor**

**∞ CERTIFICATE OF THE CITY CLERK ∞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1679, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 7<sup>th</sup> Day of July 2004.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE:\_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



***CITY COUNCIL STAFF REPORT***  
***MEETING DATE: JULY 7, 2004***

**Agenda Item # 10**

**Prepared By:**

**Deputy City Clerk**

**Approved By:**

**City Clerk**

**Submitted By:**

**City Manager**

**ADOPT ORDINANCE NO. 1680, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA 04-01 FOR APPLICATION MP-02-03: TILTON-GLENROCK (APNS 764-9-06, 16, 17, 32 & 33)**

**RECOMMENDED ACTION(S):**

**Waive** the Reading, and **Adopt** Ordinance No. 1680, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

**EXECUTIVE SUMMARY:**

On June 16, 2004, the City Council Introduced Ordinance No. 1680, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

**FISCAL IMPACT:**

None. Filing fees were paid to the City to cover the cost of processing this application.

**ORDINANCE NO. 1680, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF MORGAN HILL APPROVING  
DEVELOPMENT AGREEMENT, DA 04-01 FOR  
APPLICATION MP-02-03: TILTON-GLENROCK (APNS  
764-9-06, 16, 17, 32 & 33)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY  
ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

**SECTION 2.** The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

**SECTION 3.** The Planning Commission, pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code, awarded 36 building allocations for fiscal year 2004-2005 to that certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP-02-03: TILTON-GLENROCK	36

**SECTION 4.** References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

**SECTION 5.** The City Council hereby finds that the Residential Development Agreement and Development Proposal approved by this ordinance are compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

**SECTION 6.** Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

**SECTION 7.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 8.** Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 16<sup>th</sup> Day of June 2004, and was finally adopted at a regular meeting of said Council on the 7<sup>th</sup> Day of July 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**Irma Torrez, City Clerk**

\_\_\_\_\_  
**Dennis Kennedy, Mayor**

**∞ CERTIFICATE OF THE CITY CLERK ∞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1680, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 7<sup>th</sup> Day of July 2004.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE:\_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: JULY 7, 2004***

**Agenda Item # 11**

**Prepared By:**

**Deputy City Clerk**

**Approved By:**

**City Clerk**

**Submitted By:**

**City Manager**

### **ADOPT ORDINANCE NO. 1681, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1617, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-99-04: CHRISTEPH COURT - KOSICH TO INCORPORATE A SIX-MONTH EXTENSION OF TIME FOR A SINGLE DWELLING UNIT AND TO ALLOW FOR AN ALTERNATIVE MEASURE P COMMITMENT IN LIEU OF A FIVE-FOOT PATHWAY (APN 764-32-024)/(DAA-00-01: CHRISTEPH - KOSICH)**

### **RECOMMENDED ACTION(S):**

**Waive** the Reading, and **Adopt** Ordinance No. 1681, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

### **EXECUTIVE SUMMARY:**

On June 16, 2004, the City Council Introduced Ordinance No. 1681, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

### **FISCAL IMPACT:**

None. Filing fees were paid to the City to cover the cost of processing this application.



## **ORDINANCE NO. 1681, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1617, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-99-04: CHRISTEPH COURT - KOSICH TO INCORPORATE A SIX-MONTH EXTENSION OF TIME FOR A SINGLE DWELLING UNIT AND TO ALLOW FOR AN ALTERNATIVE MEASURE P COMMITMENT IN LIEU OF A FIVE-FOOT PATHWAY (APN 764-32-024)/(DAA-00-01: CHRISTEPH - KOSICH).**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

**SECTION 2.** The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

**SECTION 3.** The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No. 99-27A, adopted April 27, 1999, has awarded an allotment to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP-99-04: Christeph Ct - Kosich	1 unit for FY 1999-2000

**SECTION 4.** References are hereby made to a certain Agreement on file in the office of the City Clerk of the City of Morgan Hill.

These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to is amended by this ordinance and shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

**SECTION 5.** The City Council hereby finds that the development agreement amendment approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

**SECTION 6.** Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

**SECTION 7.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 8.** Effective Date Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

**SECTION 9.** EXCEPTION TO LOSS OF BUILDING ALLOTMENT. The project applicant has, in a timely manner, submitted necessary planning applications to pursue development. Delays in project processing have occurred due to excess processing time of the project final map and improvement plans, and due to the unwillingness of the property owners to sign the final parcel map. The delays are not a result of the developer's inaction, and therefore, the Council hereby grants a six-month Exception to Loss of Building Allotment for the single Measure P unit, extending the deadline to commence construction from June 30, 2004 to December 30, 2004.

**SECTION 10.** REPEAL PARAGRAPH 14(i)(ii). The Council hereby appeals Paragraph 14(i)(ii) of the development agreement as follows: ~~“Pedestrian pathway along driveway leading from Lot 2 (existing home) to private common open space on Lot 1.”~~

**SECTION 11.** ADD PARAGRAPH 14(o)(iii). The Council hereby approves the addition of Paragraph 14(o)(iii) to the development agreement as follows: *“In lieu of providing a five-ft pathway, the applicant shall provide off-site pedestrian safety improvement(s) between the project and school site, subject to review and approval of the Public Works Department. The cost of the off-site improvement(s) shall be of equal or greater value than the previously proposed pathway.”*

**SECTION 12.** Exhibit B of the development agreement is amended to read as follows:

**EXHIBIT "B"**

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**FY 1999-2000 DEVELOPMENT SCHEDULE MP-99-04: CHRISTEPH CT - KOSICH**

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<b>I. SUBDIVISION AND ZONING APPLICATIONS</b>	
Applications Filed:	March 22, 2000
<b>II. FINAL MAP SUBMITTAL</b>	
Map, Improvements Agreement and Bonds:	May 15, 2003
<b>IV. BUILDING PERMIT SUBMITTAL</b>	
Submit plans to Building Division for plan check:	September 30, 2003
<b>V. BUILDING PERMITS</b>	
Obtain Building Permits:	<del>September 30, 2004</del> <b>March 31, 2004</b>
Commence Construction:	<del>December 30, 2004</del> <b>June 30, 2004</b>

Failure to obtain building permits and commence construction by the dates listed above, shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit six (6) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner

must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 1 dwelling unit and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 16<sup>th</sup> Day of June 2004, and was finally adopted at a regular meeting of said Council on the 7<sup>th</sup> Day of July 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**Irma Torrez, City Clerk**

\_\_\_\_\_  
**Dennis Kennedy, Mayor**

**∞ CERTIFICATE OF THE CITY CLERK ∞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1681, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 7<sup>th</sup> Day of July 2004.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



***CITY COUNCIL STAFF REPORT***  
***MEETING DATE: JULY 7, 2004***

**Agenda Item # 12**

**Prepared By:**

**Deputy City Clerk**

**Approved By:**

**City Clerk**

**Submitted By:**

**City Manager**

**ADOPT ORDINANCE NO. 1682, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT, DA 03-10 FOR MP 02-14: COCHRANE – COYOTE ESTATES (APNS 728-35-008, 010; 728-36-001, 010)**

**RECOMMENDED ACTION(S):**

**Waive** the Reading, and **Adopt** Ordinance No. 1682, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

**EXECUTIVE SUMMARY:**

On June 16, 2004, the City Council Introduced Ordinance No. 1682, New Series, with amendments to the Development Agreement to incorporate standards for Below Market Rate (BMR) housing units, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

The Development Agreement has been amended at Paragraph 14(m) (viii) on page 9 to read:

(viii) Each of the BMRs shall be completed with fixtures, appliances, flooring, and finishes offered at base or standard to the market rate units, as listed in Exhibit D.

**FISCAL IMPACT:**

None. Filing fees were paid to the City to cover the cost of processing this application.

## **ORDINANCE NO. 1682, NEW SERIES**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT, DA 03-10 FOR MP 02-14: COCHRANE – COYOTE ESTATES (APNS 728-35-008, 010; 728-36-001, 010)**

#### **THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

**SECTION 2.** The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

**SECTION 3.** The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution Nos. 03-17a and 03-17b, adopted May 27, 2003, has awarded allotments to that certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP 02-14: Cochrane – Coyote Estates (Phases 8-10)	69 single-family homes

**SECTION 4.** References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

**SECTION 5.** The City Council hereby finds that the development proposal and agreement approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

**SECTION 6.** Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

**SECTION 7.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 8.** Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 16<sup>th</sup> Day of June 2004, as amended, and was finally adopted at a regular meeting of said Council on the 7<sup>th</sup> Day of July 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Irma Torrez, City Clerk

\_\_\_\_\_  
Dennis Kennedy, Mayor

∞ **CERTIFICATE OF THE CITY CLERK** ∞

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1682, New Series, adopted as amended, by the City Council of the City of Morgan Hill, California at their regular meeting held on the 7<sup>th</sup> Day of July 2004.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

RECORD AT NO FEE PURSUANT TO  
GOVERNMENT CODE SECTION 6103

Recorded at the request of  
and when recorded mail to:

City of Morgan Hill  
Community Development Department  
17555 Peak Avenue  
Morgan Hill, CA 95037

**AMENDED RESIDENTIAL DEVELOPMENT AGREEMENT**

This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by and between COYOTE ESTATES 2004 INC., under the Agreement, ("Property Owner") and the CITY OF MORGAN HILL, a municipal corporation organized and existing under the laws of the State of California (the "City").

**RECITALS**

This Agreement predicated upon the following facts:

A. Government Code Sections 65864-65869.5 authorize the City of Morgan Hill to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property;

B. Under Section 65865, the City of Morgan Hill has adopted rules and regulations establishing procedures and requirements for consideration of Development Agreements as contained in Title 18, Chapter 18.80 of the City of Morgan Hill Municipal Code;

C. The parties hereto desire to enter into a Development Agreement and proceedings have been taken in accordance with the City's rules and regulations;

D. The City of Morgan Hill has found that the Development Agreement is consistent with the General Plan and commitments made through the Residential Development Control System of the City of Morgan Hill (Title 18, Chapter 18.78 of the Municipal Code);

E. In light of the substantial commitments required to be made by Property Owner and in exchange for the consideration to be provided to the City by Property Owner as set forth herein, the City desires to give Property Owner assurance that Property Owner can proceed with the project subject to the existing official policies, rules and regulations for the term of this Development Agreement;

F. On January 21, 2004, the City Council of the City of Morgan Hill adopted Ordinance No. 1646, New Series approving the Development Agreement with the Property Owner, and the Ordinance thereafter took effect on February 21, 2004.

NOW, THEREFORE, the parties agree:

1. Definitions. In this Agreement, unless the context otherwise requires:

- (a) "City" is the City of Morgan Hill.
- (b) "Project" is that portion of the development awarded building allotments as part of the Residential Development Control System by the City of Morgan Hill.
- (c) "Property Owner" means the party having a legal or equitable interest in the real property as described in Paragraph 3 below and includes the Property Owner's successor in interest.
- (d) "Real Property" is the real property referred to in Paragraph 3 below.

2. Exhibits. The following documents are referred to in this Agreement, attached and made a part by this reference:

- Exhibit "A" - Development Allotment Evaluation
- Exhibit "B" - Development Review and Approval Schedule
- Exhibit "C" - Legal Description of Real Property

In the event there is any conflict between this Development Agreement and any of the Exhibits referred to above, this Development Agreement shall be controlling and superseding.

3. Description of Real Property. The real property which is subject to this Agreement is described in Exhibit "C".

4. Interest of Property Owner. Property Owner represents that he has a legal or equitable interest in the real property.

5. Assignment. The right of the Property Owner under this agreement may not be transferred or assigned unless the written consent of the City is first obtained which consent shall not be unreasonably withheld. The Property Owner shall provide the City with names, address, and phone numbers of the party to whom the property is to be transferred and Property Owner shall arrange an introductory meeting between the new owner, or his agent, and City Staff to facilitate consent of the City.

6. Recordation of Development Agreement. No later than ten (10) days after the City enters into this Agreement, the Clerk of the City shall record an executed copy of this Agreement in the Official Records of the County of Santa Clara. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, successors in interest to the parties to this Agreement; provided, however, that this Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee or any other successor of Property Owner acquiring a completed residential unit comprising all or part of the Project.



7. Relationship of Parties. Property Owner and the City agree that each is not the agent of the other for purposes of this Agreement or the performance hereunder, and Property Owner is an independent contractor of the City.

8. City's Approval Proceedings for Project. On August 21, 2002, the City of Morgan Hill approved a Precise Development Plan for the real property as part of its Residential Control System Review. This approval is described in proceedings designated File No. MP-02-14: Cochrane – Coyote Estates, on file in the office of Community Development to which reference is made for further particulars. The development plan provides for the development of the property as follows:

Construction of **69** single family homes as approved by the City of Morgan Hill Planning Commission.

9. Changes in Project.

(a) No substantial change, modification, revision or alteration may be made in the approved development plan without review and approval by those agencies of the City approving the plan in the first instance, which approval shall not be unreasonably withheld. No minor changes may be made in the approved development plan without review and approval by the Director of Community Development of the City, or similar representation if the Director is absent or the position is terminated, which approval shall not be unreasonably withheld.

(b) Any change specified herein and approved by this Development Agreement shall be deemed to be an allowable and approved modification to the Development Plan.

(c) In the event an application to change, modify, revise or alter, the development plan is presented to the Director of Community Development or applicable agencies of the City for review and approval, the schedule provided in Exhibit "B" shall be extended for a reasonable period of time as agreed to by the parties hereto to accommodate the review and approval process for such application.

(d) In the event the developer is unable to secure construction liability insurance because the project contains attached dwellings, the developer may convert the attached units into zero lot line or reduced setback detached units, subject to the review and approval of the Architectural Review Board. A zero lot line or reduced setback detached unit is defined as a dwelling physically separated from an adjacent dwelling on a separate lot of record but architecturally connected by a design element to give the appearance of attachment. In order to qualify for zero lot line or reduced setback detached units, evidence shall be provided to the City that the developer is unable to obtain construction liability insurance due specifically to the attached dwellings. This provision is contingent upon City Council approval of amendments to Title 18 of the Morgan Hill Municipal Code (the Zoning Code) to allow zero lot line or reduced setback detached units.

10. Time for Construction and Completion of Project.

(a) Securing Building Permits and Beginning Construction. Unless excused from performance as provided in paragraph 27 hereof, Property Owner agrees to secure building permits by (see Exhibit "B") and to begin construction of the Project in accordance with the time

requirements set forth in the Uniform Building Code and the City's Residential Development Control System (see Exhibit "B") as these exist on the date of execution of this Agreement. In the event Property Owner fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Residential Development Control System, the City, after holding a properly noticed hearing, may rescind all or part of the allotments awarded to the Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

(b) Progress Reports Until Construction of Project is Complete. Property Owner shall make reports to the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of off-site and landscaping contracts or documents for purpose of determining the amount of any bond to secure performance under said contracts, Property Owner agrees to furnish such documents to the City and the City agrees to maintain the confidentiality of such documents and not disclose the nature or extent of such documents to any person or entity in conformance with the requirements of the California Public Records Act.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 25% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 50% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 75% of the total number of units, and after all public and private improvements have been completed to the City's satisfaction, the City shall provide Property Owners with an instrument in recordable form certifying completion of that portion of the project. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units, the City shall provide Property Owners with an instrument in recordable form certifying completion of the entire project. Upon issuance of the certificate of completion for 100% of the total units, this Development Agreement shall be deemed terminated as to the entire project.

11. Hold Harmless. Property Owner agrees to defend and hold the City and its officers, agents, employees and representatives harmless from liability for damage or claims for damage for personal injury including death or claims for property damage which may arise as a result of the construction of the project by the Property Owner or his contractor, subcontractor, agent, employee or other person acting within the course and scope of the authority of Property Owner.

Property Owner further agrees to hold the City and its officers, agents, employees, and representatives harmless from liability for damages or claims for damages suffered or alleged to have been suffered as a result of the preparation, supply, and/or approval of the plans and specifications for the project by the City or its officers, agents, employees or representatives.

Nothing herein shall require or obligate Property Owner to defend or hold the City and/or its officers, agents, employees and representatives harmless from or against any damages, claims, injuries, death or liability resulting from negligent or fraudulent acts of the City or its officers, agents, employees or representatives.

12. Insurance. Property Owner shall not commence actual construction under this

Agreement until Property Owner has obtained insurance as described herein and received the approval of the City Attorney of Morgan Hill as to form and carrier, which approval shall not be unreasonably withheld. Property Owner agrees to maintain such insurance from a date beginning with the actual commencement of construction of the Project and ending with the termination of the Agreement as defined in Paragraph 20.

(a) Compensation Insurance. Property Owner shall maintain Worker's Compensation Insurance for all persons employed by Property Owner at the site of the Project, not including the contractor and or subcontractors on the site. Property Owner shall require each contractor and subcontractor similarly to provide Worker's Compensation Insurance for themselves and their respective employees. Property Owner agrees to indemnify the City for damage resulting from its failure to obtain and maintain such insurance and/or to require each contractor or subcontractor to provide such insurance as stated herein.

(b) Public Liability and Property Damage Insurance. Property Owner agrees to carry and maintain public liability insurance against claims for bodily injury, death or property damage to afford protection in the combined single limit of not less than One Million Dollars (\$1,000,000).

(c) Additional Insured. Property Owner shall obtain an additional insured endorsement to the Property Owner's public liability and property damage insurance policy naming the City, its elective and appointive boards, commissions, agents, and employees, as additional insured.

13. Cancellation of Insurance. On or before the commencement of actual construction of the Project, Property Owner shall furnish the City satisfactory evidence that the insurance carrier selected by the Property Owner and approved by the City will give the City of Morgan Hill at least ten (10) days prior written notice of cancellation or reduction in coverage of a policy.

14. Specific Restrictions on Development of Real Property. Notwithstanding the provisions of land use regulations otherwise applicable to the real property by virtue of its land use designation of Single Family Low and zoning classification of R-1 (12000) RPD, the following specific conditions of the Residential Development Control System building allotment approval govern the use of the property and control over provisions in conflict with them, whether lots are developed by the Property Owner or by subsequent property owners:

(a) Permitted uses of the property are limited to the following:

That shown on the Vesting Tentative Map, Grading Plans and Precise Residential Development Plans, as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

(b) Maximum density (intensity of use) is:

That shown on the Vesting Tentative Map, Grading Plans and Precise Residential Development Plans as approved by the City of

Morgan Hill Planning Commission and Site and Architectural Review Process.

- (c) Maximum height for each proposed building is:

That height shown on the Architectural plans as approved by the City of Morgan Hill under the Site and Architectural Review Process.

- (d) Landscaping and recreational amenities, as shown on Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and the Site and Architectural Review Process.

- (e) All public improvements shall be installed by the Property Owner along property frontages to the satisfaction of the Public Works Department consistent with the Site, Architectural, Landscape and Grading Plans as approved by the City of Morgan Hill Planning Commission and Site and Architectural Review Process.

- (f) All architectural features and materials for all structures shall be constructed as shown on the Architectural plans as approved by the Site and Architectural Review Process.

- (g) Property Owner agrees to any other reasonable condition of approval resulting from subdivision, site review and environmental review, which conditions are on file with the City.

- (h) Property Owner agrees to include the following safety features in the development:

- (i) Fire escape ladders will be provided for upper floor bedrooms.
- (ii) One mounted fire extinguisher (rated 2A10BC) for up to the first 1,500 square feet of floor space or fraction thereof plus one for each additional 1,500 square feet of floor space or fraction thereof.
- (iii) All outdoor lighting will meet the Police Department specifications.
- (iv) Each home will have internally illuminated address numbers and the address numbers painted on the curb.
- (v) Non combustible siding material will be used on at least 50% of the homes and on 50% of the surface of the units.
- (vi) Intrusion and fire alarm system with auto dialer or monitored by a central station will be installed in all units. The system shall monitor all doors and windows.
- (vii) Automatic earthquake shut-off valves shall be provided for gas service.
- (viii) Front doors and garage side doors will have dead bolts.

- (i) Property Owner agrees to include the following open space improvements in the development:

- (i) A continuous open space buffer, ten (10) feet in excess of minimum, shall be provided along the Cochrane Road frontage.
  - (ii) All park and open space areas shall be maintained by a Homeowners' Association.
  - (iii) Interior paths shall provide access to the Coyote Creek County Park.
  - (iv) The project shall provide bikeway improvements per the Bikeways Master Plan on Cochrane Road shared-use path connecting the County's Coyote Creek path to Morning Star.
  - (v) Total building coverage shall not exceed 18.8 percent.
- (j) the development: Property Owner agrees to include the following landscape improvements in
- (i) The project shall allow for the expansion of park space in coordination with adjacent County park.
  - (ii) Project shall dedicate 5.56 acres of land for area parks.
  - (iii) Applicant shall provide and install 24 inch box size trees, to be approved by the City, with a minimum height of nine (9) feet and spread of three (3) to four (4) feet, at a ratio of one (1) box size tree per ten (10) site trees (excluding street trees).
  - (iv) Varied front yard landscape plans shall be installed prior to occupancy.
  - (v) Deciduous trees shall be planted along the south facing sides of the homes.
  - (vi) Two (2) trees per interior lot, and three (3) trees per corner lot shall be planted. All street trees are to be 24" box from City approved list.
  - (vii) Drought tolerant grasses shall be used for lawn areas. Lawn areas will not exceed 25 percent of the landscape area.
  - (viii) Automatic irrigation systems shall be installed which utilize separate valves and circuits for trees, shrubs and ground covers and lawn areas.
  - (ix) Water conserving irrigation system shall be used within the development.
  - (x) Decorative hardscape shall be provided on at least 15 percent of the landscape area (pedestrian walkways across circulation aisles not included).
  - (xi) At least 50% of all plant material used shall be water conserving plants as contained in the Selected Plant List, Appendix A of the City Guide.
  - (xii) Landscaping shall be installed on all areas visible from public and private rights of way.
  - (xiii) Developer will install varied front yard landscaping plans. Custom lot landscaping will be provided by the lot owner, and development agreement commitments will be recorded against

each custom lot, including a statement that landscaping requirements must be in place or bonded prior to receiving City approval for occupancy.

(k) Property Owner agrees to pay the district-adopted developer fees as provided by the Leroy F. Greene School Facilities Act of 1998.

(i) Property Owner shall provide off-site pedestrian safety improvements within  $\frac{3}{4}$  mile of the project as designated and/or approved by MHUSD at a cost of at least \$3,000 per allocated unit. Such improvements shall include crosswalks and caution signal at crossing of Cochrane Road.

(l) Property Owner agrees to purchase three (3) transferable development credit (TDC's) subject to this development potential transfer mechanism. Should purchase of the TDC's prove infeasible, Property Owner may, at City's option, pay an in-lieu open space fee in an amount satisfactory to the City Council. Proof of unsuccessful negotiation for the TDC's must be presented to the City with the request of the in-lieu fee option. Building permits will not be granted unless this provision has been complied with to the satisfaction of the City Council.

(m) Property Owner agrees to include the following affordable housing features in the development:

- (i) The Property Owner shall provide at least **seven (7)** of the units for participation in a Below Market Rate (BMR) for sale program approved by the Community Development Department. The BMR unit(s) shall be approved by the City of Morgan Hill Planning Commission and Site and Architectural Review process. The BMR units shall be under construction and the framing inspection passed prior to the issuance of the final building permit.
- (ii) The project shall include 10 percent detached housing product, in accordance with Ordinance No. 1641, as adopted by the City Council on November 5, 2003, specifying standards for modified setback dwelling units in residential projects.
- (iii) ~~In addition to BMR homes, the project shall include 10 percent moderate rate homes, (2) two units.~~ ***Seven moderate rate units shall be provided under this agreement.***
- (iv) BMR purchasers shall be treated in the same manner as purchasers of non-BMR units. Developer, (including Developer's company, employees, and/or agents) agrees to assist BMR purchasers with all phases of the sales transaction, including, but not limited to, the preparation of any and all documents necessary to complete the sale and representation by a licensed real estate agent/broker.
- (v) Property Owner shall provide the buyer(s) of the BMR unit(s) the same option to upgrade the materials in the BMR home as a market rate buyers would in the market rate homes.
- (vi) Property Owner shall provide the same level of customer service to the BMR buyer as the market rate buyer.

- (vii) The Below Market Rate Program Guidelines are hereby incorporated herein in full by this reference.
  - (viii) Each of the BMRs shall be completed with fixtures, appliances, flooring, and finishes offered at base or standard to the market rate units as listed in Exhibit D.
- (n) Property Owner agrees to include the following construction features in the development:
- (i) Project shall achieve a 15 percent reduction in energy usage by installing "Energy Star" labeled windows, with low e-coating, including vinyl frames, and high efficiency gas furnaces of 90% efficiency rating in all homes.
  - (iii) Project shall provide two separately zoned high-efficiency heating systems in all plans over 3,000 square feet and in two story homes less than 3,000 square feet where floor plans will permit. At least 60 percent of the units in each phase will include dual zone furnaces. All furnaces shall be high efficiency with 90 percent efficiency rating or greater.
  - (iv) Project shall provide a recirculating hot water system, with demand pumping in each unit.
  - (vi) Project shall include Class A roof coverings.
  - (vii) Thermostatically controlled attic fans.
  - (ix) Subfloor and stairways to be glued and screwed.
  - (x) Plywood floors shall be checked and screwed just prior to carpet installation to avoid squeaks.
  - (xi) Interior bath walls shall be insulated.
  - (xii) Air conditioners shall be provided for all units except the BMR and moderated priced units, which are to be prepared for future A/C.
  - (xiii) All units, including BMR and MMRE, shall be plumbed for future soft water installation.
  - (xiv) Project shall include installation of cast-iron drainage pipe and piping insulation between floors, future ready wiring from all habitable rooms with home runs to a main phone box.
  - (xv) Project will run phone lines directly to a main phone box rather than looping and use RJ6 wiring for television/video and CAT 5R or equivalent for telephone lines.
  - (xvi) Gas will be supplied to all dryer spaces plus 220 volt outlet.
  - (v) The project shall provide for harmonious use of exterior materials and varied front elevations and shall have a repeat factor of 1.58.
  - (v) Project units shall show consistent level of architectural relief on all four sides of the building.
  - (xvii) Project shall use porches, balconies, or multi-unit courtyards on at least 25% of units to promote a neighborhood feel.
  - (xviii) Project shall include varied roof elevations and different roof pitches.

- (xix) Project shall conform to and match surrounding neighborhood.
- (xx) Project shall meet the 50 percent variation in house size.
- (xxi) Project shall include at least three different qualifying floor plans.
- (xxii) Each size shall constitute at least 10 percent of the total units.

(o) The Property Owner agrees to provide the following circulation improvements:

- (i) The project shall provide on-site walkways, bike paths and trails.
- (ii) Curvilinear streets and cul-de-sacs are designed to discourage fast through traffic.
- (iii) Street stubs shall be installed along the westerly project boundary, consistent with the Circulation Element of the General Plan.
- (iv) Interior streets will meet city standards.
- (v) No short blocks shall be proposed.
- (vi) Project shall provide a minimum 20 feet clear view back-out distance between enclosed garage space and drive aisle.
- (vii) Project will provide two points of access via Malaguerra Avenue and Peet Road.
- (viii) Landscape entry island and gateway feature will be provided at the Peet Road and Cochrane Road intersection.
- (ix) Proposed street circulation shall provide for adequate police patrol and emergency response.
- (x) All streets shall be used by local residents.
- (xi) Street layout shall not propose any undesirable situations such as double lots, construction over easements, etc.

(p) The project will contribute \$1,000 per unit to the off-site storm drain improvement fund in addition to payment of standard fees.

(q) Project shall contribute \$1,000 per unit to the Capital Improvements Program Fund.

(r) Project will grid water main from Cochrane Road, Malaguera Road, and Boys' Ranch area, plus interior project water lines are to be gridded.

(s) Applicant shall improve the Lawrence Property frontage located on the southeast side of Cochrane Road. Applicant shall receive credit for the excess improvement cost in accordance with the terms approved by the Public Works Director.

(t) The Property Owner agrees to provide the following park and recreation improvements:

- (i) five tot lots;
- (ii) ½ basketball court;
- (iii) an equestrian trail;
- (iv) sports court;
- (v) two passive recreation areas;
- (vi) a tennis court
- (vii) bikeway improvements in accordance with the Bikeways Master Plan on Cochrane Road shared use path connecting the County
- (viii) Coyote Creek path to Morning Star.



(u) Water mains either new or existing shall be gridded on and local streets.

(v) The Property Owner shall record constructive notice on the Final Parcel Map for the development that each lot is subject to the requirements of this Development Agreement, and that commitments under the Agreement which the City has permitted the Property Owner to delay must be fulfilled by the next subsequent property owners.

(w) The project shall provide the following information, by address for each unit, to the Community Development Department:

- |       |                        |
|-------|------------------------|
| (i)   | Date of sale           |
| (ii)  | The number of bedrooms |
| (iii) | The final sales price  |

This information shall be reported on an annual basis for the calendar year and is due to the City by March 30 of the following year for every year until the project is completed and all units are sold.

(x) The Property Owner shall record constructive notice on the Final Parcel Map for the development that each lot is subject to the requirements of this Development Agreement, and that commitments under the Agreement which the City has permitted the Property Owner to delay must be fulfilled by the next subsequent property owners.

15. Effect of Agreement on Land Use Regulations.

(a) Unless otherwise provided herein or by the provisions of the Residential Development Control System, the rules, regulations and official policies governing permitted uses of the real property, governing density and governing the design, improvement and construction standards and specifications applicable to development of the real property are those rules, regulations and official policies, including without limitation building code requirements, in force at the time of the execution of this Agreement.

(b) This Agreement does not prevent the City, in subsequent actions applicable to the real property, from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to the real property as set forth in Paragraph 14 and in effect at the time of the execution of this Agreement. Any rules, regulations or policies enacted by the City subsequent to the execution of this Agreement which are in conflict with those rules, regulations and policies in effect at the time of the execution of this Agreement or in conflict with the terms of this Agreement shall not be applied to the Project.

(c) The City shall be entitled to impose development fees in effect at the time a vested tentative map or other equivalent map is approved, rather than those in effect as of the date of this Agreement. The City shall be entitled to apply building standards in effect at the time the building permits are actually issued, rather than those in effect as of the date of this Agreement.

(d) This Agreement does not prevent the City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations and policies.

(e) Nothing contained herein will give Property Owner a vested right to develop the described Project or to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

16. State or Federal Law. In the event that state or federal laws, or regulation, enacted after this Agreement have been entered into, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

17. Periodic Review.

(a) The City shall review this Agreement at least at four times per year and on a schedule to assure compliance with the Residential Development Control System, at which time the Property Owner is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such periodic review, the City finds and determines, on the basis of substantial evidence, that Property Owner has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments.

18. Amendment or cancellation of Agreement. This Agreement may be amended, or canceled in whole or in part, by mutual consent of the parties and in the manner provided for in California Government Code Section 65868, 65867 and 65867.5.

19. Enforcement. Unless amended or canceled pursuant to Paragraph 18 hereof, this Agreement shall be enforceable by any party to it notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City, which alters or amends the rules, regulations or policies specified in Paragraph 14 and 15.

20. Termination of Agreement. This Agreement shall terminate upon the occurrence of one or more of the following events or conditions:

(a) The City finds and determines, in accordance with the terms of Paragraph 17, that Property Owner has not reasonably complied in good faith with the terms of this Agreement and the City elects to terminate this Agreement;

(b) Property Owner gives the City written notice of its decision to terminate this Agreement;

(c) Property Owner and the City mutually consent to termination of this Agreement in accordance with the terms of Paragraph 18; or

(d) Issuance of the Certificate of Completion referred to in Paragraph 10(d), provided that this Agreement shall only terminate with respect to that part of the Project to which the Certificate of Completion applies.

21. Default by Property Owner. Property Owner shall be in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) If a written warranty, representation or statement was made or furnished by Property Owner to the City with respect to this Agreement which was known or should have been known to be false in any material respect when it was initially made;

(b) A finding and determination by the City of Morgan Hill made following a

periodic review under the procedure provided for in Government Code Section 65856.1 that upon the basis of substantial evidence, the Property Owner has not complied in good faith with one or more of the material terms or conditions of this Agreement.

22. Default by the City of Morgan Hill. The City is in default under this Agreement upon the occurrence of one or more of the following events or conditions:

(a) The City, or its boards, commissions, agencies, agents or employees, unreasonably fails or refuses to take action on proposals, applications or submittal presented by the Property Owner within a reasonable time after receipt of such proposals, applications or submittal.

(b) The City unreasonably fails or refuses to perform any obligation owed by it under this Agreement.

(c) The City imposes upon Property Owner rules, regulations or official policies governing permitted uses, density, maximum height and size of proposed structures and reservations (dedications) of land for public purposes of the Property or the design, improvement and construction standards and specifications applicable to the development of the Property, which are not the same in all material respects as those rules, regulations and official policies in effect at the time of the execution of this Development Agreement and which adversely and materially affect the Project.

23. Cure of Default.

(a) This section shall govern cure of defaults except to the extent to which it may be in conflict with the Residential Development Control System. Upon the occurrence of an event of default by either party, the party not in default (the "non-defaulting party") shall give the party in default (the "defaulting party") written notice of the default. The defaulting party shall have thirty (30) calendar days from the date of notice (subject to subsection (b) below) to cure the default if such default is curable within thirty (30) days. If such default is so cured, then the parties need not take any further action except that the defaulting party may require the non-defaulting party to give written notice that the default has been adequately cured.

(b) Should the default not be cured within thirty (30) calendar days from the date of notice, or should the default be of a nature which cannot be reasonably cured within such thirty (30) day period and the defaulting party has failed to commence within said thirty (30) day period and thereafter diligently prosecute the cure, the non-defaulting party may then take any legal or equitable action to enforce its rights under this Development Agreement.

24. Remedies.

(a) In the event Property Owner defaults under the terms of this Agreement, the City, after holding a properly noticed hearing may rescind all or part of the allotments awarded to Property Owner and award said allotments to the next Residential Development Control System applicant who has qualified for such allotments or may terminate or modify this Development Agreement.

(b) In the event the City defaults under the terms of this Agreement, in no event shall the Property Owner be entitled to any of the following:

(i) Punitive damages;

(ii) Damages for lost profits;

- (iii) Damages for expenditures or costs incurred to the date of this Agreement.

(c) The parties hereby explicitly acknowledge and agree that remedies for any issue or dispute arising out of the performance or non-performance of this Agreement are limited to those provided under actions for mandamus, declaratory relief and/or specific performance. The parties further agree that in no event shall any party shall maintain any action, claim or prayer for damages pursuant to any alleged federal or state constitutional or statutory claim, or incurred as a result of an alleged breach of this Agreement.

25. Attorneys Fees and Costs. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

26. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid addressed as follows:

City of Morgan Hill:                      Community Development Department  
City of Morgan Hill  
17555 Peak Avenue  
Morgan Hill, CA 95037

With a copy to:                              City Clerk  
City of Morgan Hill  
17555 Peak Avenue  
Morgan Hill, CA 95037

Property Owner:                              Coyote Estates, L.P.  
275 Saratoga Ave., Suite 105  
Santa Clara, CA 95050

A party may change the address shown above by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

27. Force Majeure. Either party hereto, acting in good faith, shall be excused from performing any obligations or undertakings provided in this Agreement in the event and for so long as the performance of any such obligation is prevented, delayed, retarded or hindered by an act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, strikes, lockouts, eminent domain, inability to obtain labor or materials or reasonable substitutes therefor, non City governmental restrictions, regulations or controls, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, or any court action or judicial orders; unreasonable delays in processing applications or obtaining approvals, consent or permits, filing of legal actions, or any other cause, not within the reasonable control of such party. Active negligence of either party, its officers, employees or agents shall not excuse performance.

28. Rules of Construction and Miscellaneous Terms.

(a) The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

(b) If a part of this Agreement is held to be invalid, the remainder of the

Agreement is not affected.

(c) This writing contains in full, the final and exclusive Agreement between the parties.

(d) The time limits set forth in this Agreement may be extended by mutual consent of the parties.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

APPROVED AS TO FORM:

CITY OF MORGAN HILL

HELENE LEICHTER, City Attorney

J. EDWARD TEWES, City Manager

Attest:

IRMA TORREZ, City Clerk

PROPERTY OWNER(S)  
COYOTE ESTATES 2004 INC.

\_\_\_\_\_  
\_\_\_\_\_

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,  
MUST BE ACKNOWLEDGED BY A NOTARY)**

**EXHIBIT "A"**

**DEVELOPMENT ALLOTMENT EVALUATION**

**MP-02-14**

(See Entire Documents on File in the  
Community Development Department - City Hall)  
CITY OF MORGAN HILL

**EXHIBIT "B"**

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**DEVELOPMENT SCHEDULE MP-02-14: COCHRANE – COYOTE ESTATES  
FY 2004-05, FY 2005-06, FY 2006-07**

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<b>I.</b>	<b>SUBDIVISION APPLICATION</b>	
	Application Filed:	9-26-03
<b>II.</b>	<b>SITE REVIEW APPLICATION</b>	
	Application Filed:	10-28-03
<b>III.</b>	<b>FINAL MAP SUBMITTAL</b>	
	Map, Improvements Agreement and Bonds:	2-28-04
<b>IV.</b>	<b>BUILDING PERMIT SUBMITTAL</b>	
	Submit plans to Building Division for plan check:	6-30-04
<b>V.</b>	<b>OBTAIN BUILDING PERMITS</b>	
	Obtain building permits:	
	FY 2004-05 (15 Permits)	9-30-04
	FY 2004-05 (15 Permits)	3-31-05
	FY 2005-06	9-30-05
	FY 2006-07	9-30-06
<b>VI.</b>	<b>COMMENCE CONSTRUCTION</b>	
	Commence Construction:	
	FY 2004-05	6-30-05
	FY 2005-06	6-30-06
	FY 2006-07	6-30-07

Failure to obtain building permits and commence construction by the dates listed above shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit three (3) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 50 percent of the dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

**EXHIBIT "C"**

**LEGAL DESCRIPTION  
MP-02-14: COCHRANE – COYOTE ESTATES**

REAL PROPERTY in the City of Morgan Hill, County of Santa Clara, State of California, described as follows:

**PARCEL A:**

Lot 59, as shown upon that certain Map entitled, "Map of Tract No. 9140," which map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on June 2, 1999, in Book 716 of Maps of Page(s) 20, 21, 22, 23 and 24.

Excepting therefrom all those portions of Lots 1-3, Tract No. 9317, which map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on June 14, 2001 in Book 740 of Maps at page 13 and 14.

**PARCEL B:**

Lot 60, as shown upon that certain Map entitled, "Map of Tract No. 9140," which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on June 2, 1999, in Book 716 of Maps at page(s) 20, 21, 22, 23 and 24.

**PARCEL C:**

Lot 61, as shown upon that certain Map entitled, "Map of Tract No. 9140," which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on June 2, 1999, in Book 716 of Maps at Page(s) 20, 21, 22, 23 and 24.

**PARCEL D:**

Lot 6, as shown upon that certain Map entitled, "Map of Tract No. 9317," which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on June 14, 2001, in Book 740 of Maps at Pages 13 and 14.



**EXHIBIT "D"**

**BELOW MARKET RATE STANDARDS  
MP-02-14: COCHRANE – COYOTE ESTATES**

<u>Item</u>	<u>Standard for BMR</u>
Kitchen Counters	Ceramic Tile
Bath Counters	Ceramic Tile (same)
Kitchen Cabinets	Oak
Entry Flooring	Vinyl
Bath Floors	Vinyl
Other Flooring	Standard (same)
Exterior Doors	Custom (same as MR)
Exterior Hardware	Baldwin lever
Appliances	GE standard
Microwave	Yes with hood
Interior Hardware	Schlage
Faucets	Standard
Air conditioning	Prepped only
Telephone and TV wire	Included
Structured wire for Comp.	Not Included
Interior doors	Upgraded (same)
Alarm System	Included
Soft Water	Plumbed only
Closet doors openings	Not cased
Stair Railing	Oak
Interior Painting	One color



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: JULY 7, 2004***

**Agenda Item # 13**

**Prepared By:**

**Deputy City Clerk**

**Approved By:**

**City Clerk**

**Submitted By:**

**City Manager**

### **ADOPT ORDINANCE NO. 1683, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 5.32 (MASSAGE ESTABLISHMENTS) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING REGULATION OF MASSAGE ESTABLISHMENTS AND PRACTITIONERS**

### **RECOMMENDED ACTION(S):**

**Waive** the Reading, and **Adopt** Ordinance No. 1683, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

### **EXECUTIVE SUMMARY:**

On June 16, 2004, the City Council Introduced Ordinance No. 1683, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

### **FISCAL IMPACT:**

No budget adjustment is required.

## **ORDINANCE NO. 1683, NEW SERIES**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 5.32 (MASSAGE ESTABLISHMENTS) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING REGULATION OF MASSAGE ESTABLISHMENTS AND PRACTITIONERS**

WHEREAS, the City of Morgan Hill recognizes the practice of massage as a valid rejuvenative therapy; and,

WHEREAS, in recent months the City of Morgan Hill has experienced multiple arrests for prostitution at local massage establishments;

WHEREAS, due to the aspects of personal bodily contact, massage activities raise issues of concern regarding health and safety issues; and,

WHEREAS, the City of Morgan Hill wishes to provide for the orderly regulation of legitimate massage practitioners and establishments, and discourage prostitution and other unlawful activity which may be associated with a small minority of massage establishments; and,

WHEREAS, the City of Morgan Hill finds that establishment of minimal professional qualifications and operating standards for massage practitioners and establishments will encourage the operation of legitimate massage therapy in the community; and,

WHEREAS, based on these interests the City of Morgan Hill adopted Ordinance 1528 in 2001 regulating massage establishments; and,

WHEREAS, several provisions of the ordinance need amendment to clarify the educational requirements for massage practitioner licensing, and to discourage sexual activity from taking place during massage activities.

**NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AND ENACT AS FOLLOWS:**

**Section 1.** Section 5.32.040(A)(3) of Chapter 5.32 (Massage Establishments) of Title 5 (Business Taxes, Licenses and Regulations) is hereby added to the Municipal Code of the City of Morgan Hill to read as follows:

#### **5.32.040 Educational requirements for massage practitioners, and holders of massage establishment permits, and managing employee permits.**

A. General educational requirements. Except as indicated below, all applicants for a massage establishment permit, managing employee permit or massage practitioner permit must meet either of the following educational standards in order to qualify for such permit: .

- ...
3. *Schools offering correspondence courses not meeting required attendance shall not be deemed a recognized school.*

**5.32.050 Applications for massage establishment permits, managing employee permits, and massage practitioner permits.**

C. Payment of permit and examination fees. At the time of filing an application for a massage establishment permit, managing employee permit and/or massage practitioner permit, applicants shall pay massage establishment permit fees, managing employee permit fees, or massage practitioner's permit fees (as applicable) in an amount established by council resolution. ~~All applicants except for persons exempted from the city's written and practical testing requirements as set forth below shall also pay examination fees at this time. All Applicants who will need the services of an interpreter for their written and/or practical examination shall also pay a fee to cover the cost of these services in the amount established by council resolution. All fees shall be non-refundable, except that the city shall refund examination fees if the application is denied before the applicant takes the written examination or is referred to take the practical examination. If the applicant initially fails either the written or practical examinations, or both, and wishes to retest pursuant to Section 5.32.050(D)(1), he/she shall pay the applicable examination fees again before taking the examination(s) for a second time.~~ If an applicant for a massage establishment permit or managing employee permit is simultaneously applying for a massage practitioner permit because he/she intends to give massages at his/her business, the city shall not charge any additional fees related to the massage practitioner permit. ***All application fees shall be non-refundable.*** ~~However, the applicant must pay the examination fees, if an examination is required, in order to obtain the permit and certificate.~~

D. Processing of application and investigation; written and practical examinations. Upon receipt of an application for a massage establishment permit, managing employee permit, massage practitioner permit, the police chief shall review the application and supplementary material. If it is clear from the face of the application and supplementary materials that the applicant is not qualified for a permit, the application may be denied without further investigation or testing. If it appears from the face of the application and supplementary material that the applicant may be eligible for the permit sought, the police chief shall verify the information submitted by the applicant and shall further investigate the qualifications of the applicant as follows:

- ...
3. Additional investigation. The police chief may conduct additional investigation in a manner authorized by law when necessary to determine whether the applicant meets the qualifications for a permit pursuant to this article, ~~including testing as provided for below.~~
  4. ~~Written and practical examination.~~

- a. ~~Testing requirements/adoption of procedures by police chief/provision of interpreter. The police chief may require the applicant to take and pass both a written test and a practical examination to demonstrate a basic knowledge of anatomy, physiology, hygiene and the theory, practice, history, ethics and methods of massage. The practical examination shall be administered on behalf of the City of Morgan Hill by a doctor or other licensed health professional who has knowledge of the techniques and practice of massage. The police chief shall establish procedures for the administration of the written and practical examinations in accordance with this article. Applicants who need an interpreter for the written and/or practical examination shall be provided with these services by the city at the applicant's expense. If the applicant fails either the written or practical examination, or both, he/she shall be permitted to retake the examination(s) once, after at least thirty (30) but no more than sixty (60) days have elapsed from the date of the first examination(s), so long as the applicant pays the applicable examination fees for a second time and complies with police department procedures. If the applicant fails either the written or practical examination, or both, after having an opportunity to take the examination(s) for a second time, the application shall be denied, and the applicant shall not be permitted to apply again for a massage establishment permit, home massage establishment permit, managing employee permit or massage practitioner certificate for a period of one (1) year.~~
- b. ~~Exemptions from testing requirements. The following applicants shall be exempt from the testing requirements set forth in subsection a above:~~
1. ~~Massage practitioners who have completed at least five hundred (500) hours of education and training at a recognized school and maintain membership in a recognized association of massage practitioners.~~

**5.32.080 Operating requirements for massage establishments and therapeutic massage establishments.**

Unless otherwise specified herein, all massage establishments shall comply with the following operating requirements.

...

- L. **Birth Control Devices Prohibited.** *No birth control device or aid, including but not limited to condoms, shall be stored, kept or distributed on the premises of a massage establishment.*

**5.32.110 Outcall massage services.**

...

- C. **Special procedures for massage practitioners dispatched to facilities which are open**

**to the public and/or available for rental or hire** ~~hotels or motels~~ in city limits by outcall massage service. Massage practitioners may be dispatched to ***facilities which are open to the public and/or available for rental or hire*** ~~hotels or motels~~ within the city limits by any outcall massage service only by the direct arrangement of the ***facilities which are open to the public and/or available for rental or hire*** ~~hotels or motels~~ in conjunction with an incidental service regularly provided by the **facilities which are open to the public and/or available for rental or hire** ~~hotels or motels~~ and only if the massage service and massage practitioners have first obtained a permit(s) as required by this chapter. ***It shall be unlawful to perform massages at any facilities which are open to the public and/or available for rental or hire that does not have the appropriate business permit pursuant to this ordinance.***

**5.32.140      Suspension and revocation of massage establishment permits, managing employee permits, and massage practitioner permit .**

...  
B.      **Grounds for revocation or suspension of massage practitioner permit.** ***The police chief and/or his/her designee is authorized to inspect the premises of each massage business during operating hours for purpose of compliance with city ordinances and criminal laws.*** The police chief may suspend for a period of up to nine (9) months or revoke a massage practitioner permit according to the procedures set forth in subsection C, below, if there is probable cause to believe that: . . . .

**Section 2.**      **Severability.** Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

**Section 3.**      **Effective Date; Posting.** This ordinance shall take effect thirty (30) days after its second reading. This ordinance shall be posted at City Hall.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 16<sup>th</sup> Day of June 2004, and was finally adopted at a regular meeting of said Council on the 7<sup>th</sup> Day of July 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

<b>AYES:</b>	<b>COUNCIL MEMBERS:</b>
<b>NOES:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSTAIN:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSENT:</b>	<b>COUNCIL MEMBERS:</b>

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**Irma Torrez, City Clerk**

\_\_\_\_\_  
**Dennis Kennedy, Mayor**

**∞ CERTIFICATE OF THE CITY CLERK ∞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1683, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 7<sup>th</sup> Day of July 2004.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE:\_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: JULY 7, 2004***

**Agenda Item # 14**

**Prepared By:**

**Deputy City Clerk**

**Approved By:**

**City Clerk**

**Submitted By:**

**City Manager**

### **ADOPT ORDINANCE NO. 1684, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 3.04 (PURCHASING) OF TITLE 3 (REVENUE AND FINANCE) AND DELETING SECTIONS 3.04.320, 3.04.330, 3.04.340, 3.04.350, 3.04.360, AND 3.04.410 OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING LOCAL PREFERENCE, THRESHOLD AMOUNTS FOR BID, RECYCLED PRODUCTS, EMERGENCY EXEMPTIONS, AND DONATION OF UNUSABLE MATERIAL**

### **RECOMMENDED ACTION(S):**

**Waive** the Reading, and **Adopt** Ordinance No. 1684, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

### **EXECUTIVE SUMMARY:**

On June 23, 2004, the City Council Introduced Ordinance No. 1684, New Series, by the Following Roll Call Vote: AYES: Carr, Chang, Kennedy, Tate; NOES: None; ABSTAIN: None; ABSENT: Sellers.

### **FISCAL IMPACT:**

If the recommended changes are adopted, staff estimates a total savings of \$66,000 annually. These savings include reduced staff time required to prepare and process payments, and reduced costs for supplies associated with payments.



## **ORDINANCE NO. 1684, NEW SERIES**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 3.04 (PURCHASING) OF TITLE 3 (REVENUE AND FINANCE) AND DELETING SECTIONS 3.04.320, 3.04.330, 3.04.340, 3.04.350, 3.04.360, AND 3.04.410 OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING LOCAL PREFERENCE, THRESHOLD AMOUNTS FOR BID, RECYCLED PRODUCTS, EMERGENCY EXEMPTIONS, AND DONATION OF UNUSABLE MATERIAL**

**WHEREAS**, an interdepartmental Study Team recently reviewed the City's purchasing practices, including analyzing the effect of the City's Municipal Code provisions governing purchasing on the effective operation of such practices, and,

**WHEREAS**, the Study Team made numerous recommendations to reduce the costs associated with purchasing and increase the efficiency of the purchasing function, while ensuring that departmental purchasing needs are met and appropriate fiscal controls are maintained, and,

**WHEREAS**, many of the Study Team's recommendations require changes to the City's Municipal Code provisions governing purchasing, including local preference, threshold amounts for competitive bid, use of recycled products, emergency exemptions from purchasing requirements, and donation of unusable material; and,

**WHEREAS**, on April 4, 2004, the City Council approved conceptual changes to the Municipal Code in order to implement the Study Team's recommendations, and,

**WHEREAS**, the City Council has previously determined that City policy should include allowance of limited preferences in awarding bids to local vendors in certain circumstances to encourage revitalization of the local economy without unduly hampering free trade, and,

**WHEREAS**, the City Council hereby finds that the following revisions to the purchasing provisions in the Municipal Code are needed to implement the above and clarify City policies related to purchasing.

**NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AND ENACT AS FOLLOWS:**

**Section 1.** Section 3.04.030 of Chapter 3.04 (Purchasing) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill is hereby amended to read as follows:

#### **Section 3.04.030 Definitions.**

As used in this chapter: . . .

L. "Surplus supplies" means supplies that are worn out, obsolete or unsuitable for city use.

M. "Total amount" means total price charged for a product, including tax, shipping and handling, and any other associated charges.

N. "Total taxable amount" means total price for product on which sales taxes are charged.

O. "Emergency" means a situation where immediate action is required to preserve the public peace, health and safety and/or to avoid severe degradation of a City facility.

P. "Life-cycle costs" means the costs that the City reasonably should be expected to pay for the full life of a product, including the purchase amount, cost of supplies, recycling and disposal of the product.

**Section 2.** Section 3.04.040 of Chapter 3.04 (Purchasing) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill is hereby amended to read as follows:

**Section 3.04.040 Purchasing officer--Office established.**

~~There is established for the city a position denominated purchasing officer, said position may be combined with those of any other office or position or may be determined by the city manager.~~ The city manager, or his/her designee, shall ~~appoint~~ serve as the purchasing officer of the city.

**Section 3.** Section 3.04.050 of Chapter 3.04 (Purchasing) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill is hereby amended to read as follows:

**Section 3.04.050 Purchasing officer--Duties.**

A. In accordance with this chapter, the purchasing officer shall: . . .

4. May call for bids or give notice to any and all persons whatsoever or publish in any case where the same is not required by the terms of this chapter; and is empowered to invite bids by telephone, electronic mail, ~~telegraph, FAX,~~ facsimile or by mail when deemed in the best interests of the city; and . . . .

**Section 4.** Section 3.04.060 of Chapter 3.04 (Purchasing) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill is hereby amended to read as follows:

**Section 3.04.060 Operational procedures.**

Consistent with this chapter, the purchasing officer may adopt operational procedures relating to the execution of duties. At a minimum, the purchasing officer shall adopt procedures relating to the preparation of purchase orders, competitive pricing requirements for purchases of less than \$2,500, the determination that sufficient funds are available for the purchase, and verification that the order received is correct and meets the city's quality standards.

**Section 5.** Section 3.04.100 of Chapter 3.04 (Purchasing) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill is hereby amended to read as follows:

**Section 3.04.100 Preference given to bidder within city when bids are equal.**

A bidder with a ~~permanent~~ fixed place of business within the city shall ~~be preferred~~ be given a one percent preference (calculated on the total taxable amount of the purchase, over a bidder without a ~~permanent~~ fixed place of business within the

city, *and shall be preferred* in cases where, *considering this one percent preference*, two or more bids are judged to be equal on the basis of price, quality and service.

**Section 6.** Section 3.04.110 of Chapter 3.04 (Purchasing) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill is hereby amended to read as follows:

**Section 3.04.110 Purchases in the amount of two thousand five hundred dollars ~~five hundred dollars~~ or more must be in writing.**

No award for supplies or services ~~or the disposal of personal property~~ where the total ~~expenditure~~ amount or value is two thousand five hundred dollars or more shall be deemed to be an acceptance of any offer or bid unless and until the same is reduced to writing and signed by the purchasing officer and dispatched to the vendor or purchaser. *For purchases under two thousand five hundred dollars, informal bidding procedures should be utilized whenever beneficial to the city.*

**Section 7.** Section 3.04.130 of Chapter 3.04 (Purchasing) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill is hereby amended to read as follows:

**Section 3.04.130 Purchases in the amount of less than five ten thousand dollars may be informal.**

Where the total amount, or value, is less than ~~five~~ ten thousand dollars, the purchase *and subsequent purchase order shall* ~~or disposal may~~ be made by the purchasing officer ~~without written bid~~ by informal price checking through telephone or mail inquiry, comparison of prices on the Internet, or on file or otherwise.

**Section 8.** Section 3.04.140 of Chapter 3.04 (Purchasing) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill is hereby amended to read as follows:

**Section 3.04.140 Purchases in the amount of five ten thousand dollars or more—but not ~~Not~~ greater than twenty-five thousand dollars--Made by city manager through competitive bid.**

Where the total amount, or value involved, is ~~at least five~~ ten thousand dollars *or more, but not greater than twenty-five thousand dollars*, the purchase ~~or disposal~~ shall be made by the city manager through competitive bid, upon notice as required by Section 3.04.190 of this chapter.

**Section 9.** Section 3.04.150 of Chapter 3.04 (Purchasing) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill is hereby amended to read as follows:

**Section 3.04.150 Purchases in the amount of twenty five thousand dollars or more made by city council through competitive bid.**

Where the total amount, or value involved, is ~~over~~ twenty five thousand dollars *or more*, the purchase ~~or disposal~~, shall be made by the city council through competitive bid, upon notice as required by Section 3.04.190 of this chapter; . . .

**Section 10.** Section 3.04.160(A) of Chapter 3.04 (Purchasing) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill is hereby amended to read as follows:

**Section 3.04.160 Emergency authority of purchasing officer.**

A. In an emergency as defined in Section 3.04.030, ~~requiring the immediate preservation of the public peace, health and safety,~~ and precluding action by the city council, the purchasing officer may purchase supplies or services, even though the total amount thereof may exceed ~~five~~ ten thousand dollars, without competitive bids upon notice.

**Section 11.** Section 3.04.180 of Chapter 3.04 (Purchasing) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill is hereby amended to read as follows:

**Section 3.04.180 Purchase through a governmental entity.**

Purchases ~~on behalf of the city~~ may be made on behalf of the city through any governmental entity (including, but not limited to, the state or the county) pursuant to authority granted by any statute or ordinance, ~~or~~ pursuant to contractual arrangement between the city and said governmental entity, or pursuant to a written determination by the Purchasing Officer that the governmental agency conducted a competitive bidding process. The city is authorized and empowered to enter into contracts with other governmental entities providing for purchases to be made on behalf of the city.

**Section 12.** Section 3.04.200 of Chapter 3.04 (Purchasing) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill is hereby amended to read as follows:

**Section 3.04.200 Competitive bids.**

Where competitive bids are required, they shall be submitted in writing in a sealed envelope to the office of the city clerk no later than the final time and date for receipt of bids as set forth in the notice of publication, and opened publicly. Bids also may be submitted by electronic mail or facsimile, ~~FAX~~ provided, however, that the entire document is received no later than the final time set for receipt of written bids. Where competitive bids are required, the purchase ~~or disposal~~, shall be made on the basis of three or more of said bids unless the city clerk ~~shall certify~~ certifies in writing that less than three prospective vendors or purchasers have submitted bids, or that, to the best of the officer's knowledge, there are less than three prospective vendors from whom the supplies or services are available and that bids were invited from said vendors.

**Section 13.** Section 3.04.210 of Chapter 3.04 (Purchasing) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill is hereby amended to read as follows:

**Section 3.04.210 Bid deposits.**

When deemed necessary by the purchasing officer, city manager or city council, any bidder may be required to submit a bid proposal, or bond, in an amount determined by the purchasing officer, city manager or city council. A successful

bidder (and his/her surety, if a bond is furnished) shall be liable for all damages upon said bidder's failure to enter into a contract with the city, or upon said bidder's failure to perform his/her bid.

**Section 14.** Section 3.04.220 of Chapter 3.04 (Purchasing) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill is hereby amended to read as follows:

**Section 3.04.220 Faithful performance deposits.**

When deemed necessary by the purchasing officer, city manager or city council, any person entering into a contract with the city may be required to furnish a faithful performance and/or a time and materials deposit, or bond, in an amount determined by the purchasing officer, city manager or city council. Said person (and surety, if a bond is furnished) shall be liable for any damages upon said person's failure to faithfully perform the terms of his/her contract.

**Section 15.** Section 3.04.230 of Chapter 3.04 (Purchasing) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill is hereby amended to read as follows:

**Section 3.04.230 Purchasing officer--Additional powers and duties.**

A. The purchasing officer shall establish and maintain procedures and specifications for the purchase of recycled or recyclable products. These procedures shall include a calculation of the life-cycle cost, as defined in Section 3.04.030, of all products valued at \$10,000 or more. ~~paper and paper products which give preference, whenever feasible, to the purchase of recycled paper and paper products containing recycled paper.~~

~~—B.—The purchasing officer shall purchase recycled paper and paper products, instead of unrecycled paper or paper products, whenever such recycled paper and paper products are available at no more than five percent more than the total cost of unrecycled paper and paper products, and when fitness and quality are equal.~~

~~—C.—The purchasing officer shall provide a preference to the suppliers of recycled paper or paper products equal to five percent of the lowest bid or price quoted by suppliers offering unrecycled paper or paper products.~~

~~—D.—For the purposes of this section, "recycled paper" means all paper and wood pulp products as defined in Section 10391 of the Public Contract Code or as amended.~~

**Section 16.** Section 3.04.240 of Chapter 3.04 (Purchasing) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill is hereby amended to read as follows:

**Section 3.04.240 Consultants.**

...  
B. The purchasing officer, ~~city manager or designated representative~~ shall be empowered to engage a consultant (including, but not limited to, material testing service, construction inspection services, architectural, engineering, testing, land surveying, appraising, environmental, planning, financial, legal, development processing, governmental operations, special studies, construction project

management and other services related thereto) without the necessity of an informal bid or competitive bid or notice thereof.

1. Without city council approval if the consultant's total fee for services and materials under the contract by which the consultant is engaged does not exceed twenty five thousand dollars;

2. With city council approval if the consultant's total fee for services and materials under the contract by which the consultant is engaged exceeds twenty five thousand dollars. City council approval is not required for services in excess of twenty five thousand dollars if the consultant's total fee for services and materials is to provide environmental services that will be paid for by a development processing project applicant.

**Section 17.** Section 3.04.250 of Chapter 3.04 (Purchasing) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill is hereby amended to read as follows:

**Section 3.04.250 Request for sealed proposals.**

A. The purchasing officer shall be empowered to utilize the request for sealed proposal method for purchase of supplies or services ~~upon the following conditions:~~

~~A. With city manager approval if the amount, or value, involved is more than five thousand dollars, but less than twenty thousand dollars; or~~

~~— B. With city council approval if the amount, or value, involved is more than twenty thousand dollars; or~~

~~— C. Without city manager or city council approval if the amount, or value, involved is less than five thousand dollars; and~~

~~— D. In either case (A), (B) or (C), valued at less than twenty five thousand dollars, upon determination by the purchasing officer that the use of competitive bidding is not practical or advantageous to the city because one or more of the following conditions exist: . . .~~

B. City council approval is required to use the sealed proposal method for the purchase of supplies or services valued at more than twenty five thousand dollars.

**Section 18.** Section 3.04.260 of Chapter 3.04 (Purchasing) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill is hereby amended to read as follows:

**Section 3.04.260 Sealed bids--Notice.**

For purchases in excess of twenty five thousand dollars, notice shall be given as required in Section 3.04.190 of this chapter.

**Section 19.** Sections 3.04.320, 3.04.330, 3.04.340, 3.04.350 and 3.04.360 of Chapter 3.04 (Purchasing) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill are hereby deleted in their entirety.

**Section 20.** Section 3.04.380 of Chapter 3.04 (Purchasing) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill is hereby amended to read as follows:

**Section 3.04.380~~320~~ Disposals of less than five hundred dollars.**

Except as otherwise provided by state law or city ordinance, the purchasing officer shall be empowered to dispose of personal property of the city which cannot be used by any department of the city, at public or private sale, or by renting, *donating* or destroying the same, (all with or without notice, competitive bid or necessity of posting bid bonds, at the purchasing officer's discretion, and upon such terms as said officer deems best) provided any single item of property involved does not exceed five hundred dollars in current market value. *At the beginning of each fiscal year, the city council may adopt a list of acceptable non-profit organizations to which the city may donate.*

**Section 21.** Section 3.04.390 of Chapter 3.04 (Purchasing) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill is hereby amended to read as follows:

**Section 3.04.390~~330~~ Deposits.**

The purchasing officer may, in said officer's discretion, require that a deposit in the amount of the bid or any fraction thereof accompany each bid upon disposal of personal property.

**Section 22.** Section 3.04.400 of Chapter 3.04 (Purchasing) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill is hereby amended to read as follows:

**Section 3.04.400 Disposals of more than five hundred dollars.**

In the event any single item of property exceeds five hundred dollars in current market value, the city council may empower the purchasing officer to dispose of it (in accordance with the same terms and conditions, and subject to the same discretion and limitations as if it were under five hundred dollars in value). Alternatively, the city council may elect to sell, rent, *donate* or destroy the same in accordance with whatever provision and/or terms and conditions the city council may, in its discretion, elect.

**Section 23.** Section 3.04.410 of Chapter 3.04 (Purchasing) of Title 3 (Revenue and Finance) of the Municipal Code of the City of Morgan Hill is hereby deleted in its entirety.

**Section 24.** **Severability.** Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

**Section 25.** **Effective Date; Posting.** This ordinance shall take effect thirty (30) days after its second reading. This ordinance shall be posted at City Hall.

The foregoing ordinance was introduced at the Special meeting of the City Council of the City of Morgan Hill held on the 23<sup>rd</sup> Day of June 2004, and was finally adopted at a regular meeting of said Council on the 7<sup>th</sup> Day of July 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**Irma Torrez, City Clerk**

\_\_\_\_\_  
**Dennis Kennedy, Mayor**

**∞ CERTIFICATE OF THE CITY CLERK ∞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1684, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 7<sup>th</sup> Day of July 2004.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



**CITY OF MORGAN HILL  
CITY COUNCIL SPECIAL MEETING  
MINUTES – JUNE 23, 2004**

**CALL TO ORDER**

Mayor Kennedy called the special meeting to order at 4:02 P.M.

**ROLL CALL ATTENDANCE**

Present: Council Members Carr, Chang, Tate and Mayor Kennedy  
Absent: Council Member Sellers

**DECLARATION OF POSTING OF AGENDA**

Deputy City Clerk Malone certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

***City Council Action***

**WORKSHOP:**

**1. COYOTE VALLEY SPECIFIC PLAN DEVELOPMENT – MORGAN HILL AND SOUTH COUNTY PARTICIPATION** (Oral Staff Report Presented at Workshop)

Representatives From Other Agencies Present:

Supervisor Don Gage and Russ Danielson (Coyote Valley Specific Plan Task Force)  
Steve Kinsella (Gavilan College)  
Craig Edgerton and Alex Kennett (Open Space Authority)  
Dr. Carolyn McKennan and Shelle Thomas (MH Unified School District)  
Connie Ludewig (San Martin Neighborhood Alliance)

Agenda Item 1) Welcome and Introductions

Mayor Kennedy welcomed and introduced the participants.

Agenda Item 2) Review of Common Interests

David Bischoff presented this item describing the status of the Common Interests asking if there were any changes necessary.

Connie Ludewig suggested impacts on South County Airport be added to the list of interests and concerns. There was agreement that this issue should be added to the list of Common Interests.

No other action was taken on this item.

Agenda Item 3) Results of Meeting with Mayor Gonzales

Mayor Kennedy and Steve Kinsella presented the results of the meeting. They said the meeting focused on the Common Interests drafted at the prior meeting. They said that Mayor Gonzales was receptive to the comments and issues raised and agreed to future meetings with the group.

No action was taken on this item.

Agenda Item 4) Review of June 21 CVSP Task Force Meeting

David Bischoff presented a summary of the actions of the recent Community workshop and Task Force meetings.

No action was taken on this item.

Agenda Item 5) Review of MH Unified School District Workshop Regarding Coyote Valley Development

Dr. McKennan presented a summary of the workshop, indicating that many questions were asked and no conclusions reached.

No action was taken on this item.

Agenda Item 6) Discussion of Open Space Authority Role in Defining the CV Greenbelt

Craige Edgerton presented this item, indicating that the Citizen Advisory Committee of the Open Space Authority will develop a recommendation regarding appropriate uses for the Greenbelt to present to the San Jose Task Force.

Mayor Kennedy suggested that Morgan Hill should provide the Authority with its ideas regarding Greenbelt uses.

No action was taken on this item.

**PUBLIC COMMENT**

Mayor Kennedy opened the public comment.

Ted Fox, CEO of Saint Louise Regional Hospital, spoke in opposition to any development in Coyote Valley which would jeopardize their efforts to expand the DePaul Health Center campus and that it was their intent to serve CV development from this facility.

There was agreement that this issue should be added to the list of Common Interests.

Mr. Sasso and Mr. Richard Smith both spoke about the Greenbelt. They indicated that the San Jose process was moving very quickly and that they and other property owners in the greenbelt were trying to organize. They expressed concern about limitations on the types and density of uses, which may be allowed in the area and felt the area may be more of a non-urban area rather than a greenbelt.

No further comments being offered, the public comment was closed.

#### Agenda Item 7) Future Steps

Mayor Kennedy presented this item, asking participants for suggestions for future action and proposing future meetings of the group.

Several participants suggested the Common Interests be made more specific.

Supervisor Gage suggested that the revised, more specific, Interests be sent to San Jose representatives requesting a response to the issues raised.

It was agreed the Common Interests should be rewritten to be more specific. It was further agreed that a letter should be drafted to San Jose officials, for signature by representatives of each of the participating agencies, requesting a response as to how the Interests would be addressed by the Specific Plan. A draft of the letter and revised Interests was to be provided to each agency for comment.

It was agreed that the next meeting of the group should be held on August 11<sup>th</sup> at 4:00 p.m. at the Community and Cultural Center. The agenda for the meeting should include a status report on the definition of the Greenbelt.

#### **ADJOURNMENT**

There being no further business, Mayor Kennedy adjourned the meeting at 5:45 P.M.

#### **MINUTES RECORDED AND PREPARED BY:**

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**DAVID BISCHOFF, URBAN LIMIT LINE/GREENBELT PLAN CONSULTANT**

**CITY OF MORGAN HILL  
JOINT SPECIAL AND REGULAR CITY COUNCIL  
AND SPECIAL REDEVELOPMENT AGENCY MEETING  
MINUTES – JUNE 16, 2004**

**CALL TO ORDER**

Mayor/Chairman Kennedy called the special meeting to order at 6:05 p.m.

**ROLL CALL ATTENDANCE**

Present: Council/Agency Members Carr, Tate and Mayor/Chairman Kennedy  
Late: Council/Agency Members Chang and Sellers

**DECLARATION OF POSTING OF AGENDA**

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

***City Council and Redevelopment Agency Action***

**CLOSED SESSIONS:**

City Attorney/Agency Counsel Leichter announced the below listed closed session items.

**1.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Authority: Government Code Sections 54956.9(b) & (c)  
Number of Potential Cases: 4

**2.**

**CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Authority: Government Code 54956.8  
Property: 215 Tennant Avenue, APN: 817-04-002  
Negotiating Parties:  
    For City: City Manager, Director of Public Works, City Attorney, and Attorney  
                    Gale Connor  
    For Property Owners: Robert and Teresita Carrasco and Bruce Tichinin  
Closed Session Topic/Under Negotiation: Price and Terms of Payment

**3.**

**CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Authority: Government Code 54956.8  
Property: 95 Tennant Avenue, APN: 817-04-006  
Negotiating Parties:  
    For City: City Manager, Director of Public Works, City Attorney, and Attorney  
                    Gale Connor  
    For Property Owners: Marko and Klara Gera

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Closed Session Topic/Under Negotiation: Price and Terms of Payment

**4.**

**CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Authority: Government Code 54956.8

Property: 145 Tennant Avenue, APN: 817-04-008

Negotiating Parties:

For City: City Manager, Director of Public Works, City Attorney, and Attorney  
Gale Connor

For Property Owners: Joseph Hernandez, as trustee; et al

Closed Session Topic/Under Negotiation: Price and Terms of Payment

**5.**

**CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Authority: Government Code section 54956.9(a)

Name of Case: Hacienda Valley Mobile Estates v. City of Morgan Hill.

Case Number: United States Supreme Court 03-1571

**6.**

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Authority: Government Code section 54956.9(a)

Case Name: Hacienda Valley Mobile Estates v. City of Morgan Hill

Case Number: Santa Clara Superior Court, Case No. CV 807708

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:07 p.m.

**RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 7:07 p.m.

**CLOSED SESSION ANNOUNCEMENT**

Mayor/Chairman Kennedy announced that no reportable action was taken on closed session for items 2-6 and that Closed Session item 1 was continued to the conclusion of the agenda.

**SILENT INVOCATION**

**PLEDGE OF ALLEGIANCE**

At the invitation of Mayor/Chairman Kennedy, Bob Hunt led the Pledge of Allegiance.

## **RECOGNITIONS**

Mayor Kennedy recognized retiring Parks & Recreation Commissioners Daniel Kenney and Rick Page, and Mobile Home Rent Commissioner Mark Moore. On behalf of the Council, he thanked them for their years of service to the community of Morgan Hill. The recognition of retiring Library Commissioner Mary Ellen Salzano was deferred to a future meeting date.

Mayor Kennedy presented proclamations to Cricket Rubino and Maria Faust, YMCA Volunteers.

Mayor Kennedy announced a proclamation for Nordstrom School Principal Nancy Milo in recognition of the Distinguished School Award.

Mayor Kennedy presented a proclamation to Bruce and Dave Hall, employees of Digital Auto Drive/Velodyne Acoustics for their Third Place finish at the Autonomous Vehicle Race.

## **CITY COUNCIL REPORT**

Council Member Tate reported that he is involved with the library on two different fronts. The first is the direction of the new library. He indicated that a sizeable portion of next week's Council meeting will be dedicated to the report from the Library subcommittee consisting of Mayor Kennedy and himself. He indicated that the parcel tax that pays for approximately 22% of the operating cost of the library is due to expire next year. He said that an effort was made to extend the parcel tax in March 2004, noting that this effort was unsuccessful, receiving 61% of the 67% votes required. He indicated that a lot of work is taking place to determine whether citizens would approve an extension to the parcel tax. He said that the Library subcommittee is encouraged that the State will not invoke as much take away from the library as the library will be exempt from the special district shift that will be taking place. He said that the City's budget, proposed for adoption this evening, did not anticipate State level funding. Therefore, the budget will be revisited in August. He stated that he is also involved with an Ethics Subcommittee of the City Council, indicating that there is a plan to have 3 to 4 workshops with subcommittee appointees from other commissions and advisory boards that will be developing an ethics policy for the City of Morgan Hill. He indicated that the first meeting is scheduled to take place on June 29, 2004. He stated that he no longer serves on the Council's Economic Development Subcommittee (EDS), but stated that he still attends the Chamber's Economic Development Partnership Committee meeting. Since the City formed the partnership with the Chamber on economic development, he senses a real sense of ownership, responsibility, enthusiasm and optimism. He was encouraged that the Chamber is having a lot more individuals showing up for these meetings and to see that there is good discussion/things in the works.

## **COUNCIL SUBCOMMITTEE REPORT**

Mayor Kennedy said that he has noticed that more residents seem to have suntans/sunburns. He felt that this may be attributed to the fact that the City opened the aquatics center this past weekend. He said that an overwhelming grand opening event took place and that everyone was pleased with the tremendous response to the opening of the aquatics center. He said that this is another wonderful gem in the necklace

of gems the City is building, all part of the Vision of Morgan Hill. He said that the City needs to find additional parking spaces because the center is so successful. He encouraged citizens who have not visited the aquatics center to do so.

### **CITY MANAGER REPORT**

City Manager Tewes noted that later on the agenda, the Council will be asked to adopt the City's budget for Fiscal Year 2004-05. He said that this budget is based on an assumption about what will happen at the State level. He said that it is an assumption that the City will lose approximately \$350,000 in local revenue by transferring it to Sacramento to assist the State in balancing its budget the next two years. He stated that this is the compromise that was reached with the Governor in exchange for agreeing to support a constitutional amendment to protect local revenues thereafter. He indicated that the Governor has reiterated his strong support of the compromise this week. However, the bad news is that the constitutional deadline for the adoption of the State budget did not take place yesterday.

### **CITY ATTORNEY REPORT**

City Attorney Leichter stated that she did not have a report to present this evening.

### **PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the floor to public comment for items not appearing on this evening's agenda.

Joe Muller, on behalf of the Community Health Foundation, stated that he was in attendance to introduce a new doctor to the community.

Ted Fox, CEO of St. Louise Regional, introduced Dr. Nimisha Shah who recently relocated from Kentucky.

Dr. Shah indicated that she will be providing internal medical services to the community at the DePaul Health Center located at St. Louise Drive. She indicated that her husband is also board certified in internal medicine and that he would be joining her practice as it grows successfully.

Mr. Fox said that St. Louise Regional Hospital, Daughters of Charity and O'Connor Hospital have a dream and a vision, one shared by the City Council and members of the Community Health Foundation: restoring medical services in this area. He felt that Dr. Shaw is a great start toward this dream and vision. When Dr. Shah's practice takes off, her husband will be able to join her as well. He stated that it is critical for Dr. Shah and other practitioners to have the community's support and that their services are used.

Mayor Pro Tempore/Vice-chair Sellers entered and took his seat on the dais.

No further comments were offered.

## ***City Council Action***

### **CONSENT CALENDAR:**

Rosemary Roselle, marketing chair for the Poppy Jasper Film Festival, indicated that the Poppy Jasper Film Festival Committee is kicking off the first fundraising event: the showing of Grease on July 10 in the Granada Theater. She requested that community members participate and come in costume. She stated her appreciation of the Council's support.

Kim Bush, Chairperson for the Poppy Jasper Film Festival, indicated that the Poppy Jasper Film Festival is a project of Media Access Coalition of Central California, the fiscal guardians of Channel 19 (MHAT). She thanked the City Manager for allowing them to put on a mini film festival in the Playhouse at the 2003 Taste of Morgan Hill. She indicated that the film festival will be held on November 12-14. The Committee was focused on several points in putting together this film festival: 1) it will be called the Poppy Jasper Film festival named for the stone that is only found in Morgan Hill; 2) will only feature short films; 3) and that California filmmakers would be featured. She stated that the Committee would like to raise funds for high school scholarships for students interested in films. She thanked Mr. Manou Mobedshahi, owner of the Granada Theater, for the use of the facility for the film festival and future projects. She also thanked Mr. Paul Gunskey, president of the Cinelux Theaters who lent his expertise to bringing the Granada back on line.

Darryl Manning, on behalf of the Morgan Hill Independence Day Inc. (IDI), thanked the Council for its continued co-sponsorship of the community's Fourth of July celebrations. She said that it is the ongoing participation of the City, local businesses and residents that make the festivities unique and wonderful. She indicated that IDI is a volunteer organization. She thanked City staff, Bill Ferguson with the Santa Clara County Fire Department and all others involved in local administration for providing her with the assistance and advice in the preparation of the 2004 Independence Day festivities. She identified the upcoming Fourth of July events. She introduced the IDI Fourth of July committee members in attendance this evening: Bruce Tichinin, immediate past president; Bob & Maurine Hunt, parade co-chairs; and Joe Sampson, City-Police department liaison.

Mayor Kennedy requested that item 1 and Council Member Tate requested that items 6, 8 and 20 be removed from the Consent Calendar.

**Action:**        *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Approved** Consent Calendar Items 2-5, 7, and 9-13 (amending items 15 and 16 to correct typographical errors) as follows:*

### **2.     MONTHLY FINANCIAL & INVESTMENT REPORT SUBMITTAL**

**Action:** ***Directed Staff** to Submit Each Month's Financial and Investment Report to the City Council on the Fourth Wednesday of the Following Month; Or, If Not City Council Meeting Were Scheduled on That Date, To Submit the Report to the City Council on the Third Wednesday of the Following Month.*



3. **SUBDIVISION, SD-04-01: COCHRANE-COYOTE ESTATES (PHASES 9 THROUGH 11)**  
***Action:** Took No Action, Thereby Concurring with the Planning Commission's Decision Regarding Approval of the Subdivision Map.*
4. **SUBDIVISION, SD-04-08: TILTON-GLENROCK**  
***Action:** Took No Action, Thereby Concurring with the Planning Commission's Decision Regarding Approval of the Subdivision Map.*
5. **EXTENSION OF CONTRACT FOR CONSULTANT PLANNING SERVICES**  
***Action:** Authorized the City Manager to Execute a Contract in an Amount Not to Exceed \$63,000 for Contract Planning Services. Approval of the Contract Extension is Contingent upon City Council Approval of Planning Division's Fiscal Year 2004-2005 Budget as Recommended for Contract Labor Services.*
7. **REQUEST FOR CITY COUNCIL CO-SPONSORSHIP OF THE POPPY JASPER FILM FESTIVAL**  
***Action:** Agreed to Co-Sponsor the Poppy Jasper Film Festival Fundraiser Event/Film Festival in Name Only.*
9. **RESOLUTION REQUESTING AUTHORIZATION UNDER SECTION 21221(h) OF CALIFORNIA CODE FROM PUBLIC EMPLOYEE'S RETIREMENT SYSTEM (CalPERS) FOR BRUCE CUMMING TO BE EMPLOYED FOR MORE THAN 960 HOURS IN CALENDAR YEAR 2004 – Resolution No. 5802**  
***Action:** Approved Resolution No. 5802, Requesting CalPERS for an Extension for Interim Police Chief Bruce Cumming to be Employed for More Than 960 Hours in Calendar Year 2004.*
10. **EXTENSION OF EMPLOYMENT AGREEMENT FOR INTERIM APPOINTMENT OF CHIEF OF POLICE**  
***Action:** Authorized the City Manager to Execute an Extension to the Employment Agreement with Interim Police Chief Bruce Cumming in an Amount Not to Exceed \$28,750, With All Other Conditions the Same.*
11. **ACCEPTANCE OF BUTTERFIELD BOULEVARD LINEAR PARK PROJECT**  
***Action:** 1) Accepted as Complete the Butterfield Boulevard Linear Park Project in the Final Amount of \$393,746.56; and 2) Directed the City Clerk to File the Notice of Completion with the County Recorder's Office.*
12. **CONTRACT FOR CONSTRUCTION OF EDMUNDSON WATER MAIN DISTRIBUTION, PHASE I**  
***Action:** Awarded Contract to McGuire and Hester for the Construction of the Edmundson Water Main Distribution Project in the Amount of \$349,699, Subject to Review and Approval by the City Attorney.*

13. **PROFESSIONAL SERVICES CONTRACT FOR FEASIBILITY ANALYSIS FOR INTERIM SEWER TRUNK CONNECTION**  
*Action: **Authorized** the City Manager to Execute a Professional Services Contract in the Amount of \$35,410 with Schaaf & Wheeler for a Feasibility Analysis of an Interim Sewer Trunk Connection.*
14. **CONTRACT FOR PARADISE PARK PLAYGROUND EQUIPMENT REPLACEMENT PROJECT**  
*Action: 1) **Awarded** Contract to Bellicitti & Pellicciotti Company, Inc. in the Amount of \$79,990 for Construction of the Paradise Park Playground Equipment Replacement Project; and 2) **Authorized** an \$8,000 (10%) Construction Contingency.*
15. **CONTRACT TO PROVIDE PLAN CHECKING SERVICES ON AN AS-NEEDED BASIS**  
*Action: 1) **Approved** Fiscal Year 2004-2005 Professional Services Contract with Harris & Associates to Provide Contract Plan Checking Services on an As Needed Basis at a Fee Not to Exceed \$100,000, Subject to Adoption of the Fiscal Year 2004-2005 Budget; and 2) **Authorized** the City Manager to Execute the Contract, Subject to Review and Approval by the City Attorney.*
16. **CONTRACT FOR INFORMATION TECHNOLOGY MANAGEMENT SERVICES**  
*Action: **Authorized** the City Manager to Execute an Agreement with the City of Palo Alto in an Amount Not to Exceed \$150,000 for Information Technology Management Services, Subject to Review and Approval of the City Attorney.*
17. **ADOPT ORDINANCE NO. 1676, NEW SERIES, AS AMENDED**  
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1676, New Series, As Amended, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1618, NEW SERIES, TO AMEND DEVELOPMENT AGREEMENT DAA-02-09 FOR APPLICATION MMP-02-02: DEWITT – MARQUEZ TO ALLOW FOR A SIX-MONTH EXTENSION TO THE APPROVED DEVELOPMENT SCHEDULE. (APN 773-08-014).***
18. **ADOPT ORDINANCE NO. 1677, NEW SERIES, AS AMENDED**  
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1677, New Series, As Amended, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, AMENDING ARTICLES II AND III, THE STANDARDS AND CRITERIA AND PROCEDURES OF THE RESIDENTIAL DEVELOPMENT CONTROL SYSTEM AS SET FORTH IN CHAPTER 18.78 OF THE MORGAN HILL MUNICIPAL CODE.***
19. **ADOPT ORDINANCE NO. 1678, NEW SERIES**

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**Action:** ***Waived** the Reading, and **Adopted** Ordinance No. 1678, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL REPEALING CHAPTER 15.04 (Administrative Code) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL, AND ADDING SECTION 15.04.100 (Violations of Chapter - Penalties) TO TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL, THEREBY AMENDING PROVISIONS OF THE UNIFORM ADMINISTRATIVE CODE REGARDING BUILDING ADVISORY COMMITTEES (UAC SECTION 204), VIOLATIONS (UAC SECTION 205), CERTIFICATE OF OCCUPANCY-CERTIFICATE ISSUED (UAC SECTION 309.3), and FEES (UAC TABLE 3-A).***

#### **1. MAY 2004 FINANCE & INVESTMENT REPORT**

Mayor Kennedy noted that although the year is 92% complete, the City's revenue is coming in at 87%. He inquired whether this was less than what was anticipated.

Finance Director Dilles indicated that the number is consistent with what staff has been expecting and what was projected in the budget. He said that the number is low primarily because the City received less vehicle license fees as a result of State take ways. However, the State will return these fees a few years from now. Also, the City's sales tax is down. Therefore, this number is consistent with the projections that the Council has been seeing and as seen in the budget.

**Action:** *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Accepted** and **Filed** Report.*

#### **6. AQUATICS CENTER RENTAL INSURANCE REQUIREMENTS**

Council Member Tate said that insurance has been an issue with the opening of public facilities. He felt that it is worth discussing insurance requirements. He said that in order to use the aquatics facility, an organization has to have \$5 million in insurance coverage. He said that it seems as though the staff report is stating that a certain group (e.g., the water polo group) should have more than \$1 million in insurance coverage. However, because of experience they cannot obtain this insurance amount. He felt that the City has to grant the request because a group cannot secure the \$5 million insurance coverage. On the other hand, groups cannot secure the insurance amount needed to protect the City. He felt that this is a catch 22 situation. He said that it is worth noting to the public that this is a situation the City finds itself in with its public facilities in terms of being squeezed by insurance situations and taking on a larger risk than he believes prudent. However, the City has to do this in order to make the facilities available. It is his hope that the public understands that insurance coverage is a cost that the City has to pass on to facility users.

Finance Director Dilles noted that the staff report indicates that should the insurance limits become available, the City would expect that the groups increase their insurance coverage at that time. He

concurring that the City is taking some risk by not requiring the \$5 million insurance coverage. He informed the Council that the ABAG plan indicates that this is not a unique problem. He said that a pool of cities agree that there is a higher risk associated with certain activities such as aquatics activities. From a risk management side, he would feel better if the City could get the \$5 million coverage. However, from a practical side, it is not obtainable at this time.

Mayor Pro Tempore Sellers felt that staff has proposed an interim solution. He recommended that staff explore solutions that other communities have come up with. Also, that staff consider entering into discussions with ABAG to try and enter into an agreement that would have a solution that works for all cities that have similar problems. He felt that a collaboratively/collectively effort may result in a solution that makes more sense in the long term. He agreed that the longer the City takes this route, the more likely the City would end up with an occurrence that exceeds the \$1 million limit and that the City would be looking at some significant financial risks.

Finance Director Dilles informed the Council that the City has coverage through ABAG's plan. Should the City have a loss of this magnitude, the ABAG plan would provide the City up to \$10 million in coverage. However, the City would see its premiums go up significantly.

**Action:** *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council unanimously (5-0) **Endorsed** the Proposed Policy Concerning Minimum Insurance Requirements for Tenants who Lease or Operate Aquatics Center Facilities.*

**8. REQUEST FOR COUNCIL SUPPORT OF AMERICANS FOR NATIONAL PARKS – Resolution No. 5801**

Council Member Tate stated that although he supports National Parks be fully maintained, he noted that the City is not in charge of National Parks. He indicated that the Council recently passed a budget that cuts maintenance of City parks. He did not believe that it was the City's place to tell anyone that they have to spend more on maintenance. Therefore, he could not support the measure.

Mayor Kennedy said that he requested this item be agendaized for Council action. He stated that the intent was to ask the City's congressional representatives to support maintaining and keeping the National Parks for everyone to enjoy, thus, the reason for bringing this item forward. He said that the resolution is in support of this philosophy.

Council Member Sellers indicated that the Legislative Subcommittee reviewed this bill and recommends Council support of the resolution.

**Action:** *On a motion by Mayor Pro Tempore Sellers and second by Council Member Carr, the City Council, on a 4-1 vote with Council Member Tate voting no, 1) **Adopted** Resolution No. 5801 in Support of Americans for National Parks; and 2) **Directed** the City Clerk to Forward a Copy of the Resolution to the National Parks Conservation Association.*

**20. AGREEMENT BETWEEN THE CITY AND INDEPENDENCE DAY, INC. TO CO-**

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**SPONSOR THE JULY FOURTH CELEBRATIONS**

Council Member Tate noted that the staff report indicates that the City is appropriating \$25,000, including in kind services while the fiscal impact references \$22,000. He requested clarification of what amount the Council is being asked to approve.

Lieutenant Joe Sampson said that in the past, the City has held to a \$25,000 cap. It was his understanding that the City attempts to look at the in kind cost that would be a result of police and public works cost. Staff performs an estimated calculation of what this cost might be based on the salary and the time estimated that would be dedicated to the event. The City then looks at what has been appropriated from the Community Promotion's budget. These two numbers are taken and combined. Based on what the City is looking at this year, the estimate, based on the numbers, is \$22,000. He stated that it is the City's goal not to exceed \$25,000 to give the City leeway should an incident occur.

**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Authorized** the City Manager to Sign the Co-Sponsorship Agreement with Independence Day, Inc.*

## ***City Council and Redevelopment Agency Action***

**CONSENT CALENDAR:**

**Action:** *On a motion by Mayor Pro Tempore/Vice-chair Sellers and seconded by Council/Agency Member Tate, the City Council/Agency Board unanimously (5-0) **Approved** Consent Calendar Items 21-24, as follows:*

**21. AGREEMENTS WITH JOHNSON LUMBER**

**Action:** ***Authorized** the City Manager/Executive Director to do Everything Necessary and Appropriate to Make the Requested Modification to the Agreements.*

**22. JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES FOR MAY 21, 2004.**

**Action:** ***Approved** the Minutes as submitted.*

**22. JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES FOR JUNE 2, 2004.**

**Action:** ***Approved** the Minutes as submitted.*

**23. JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES FOR JUNE 2, 2004.**

**Action:** ***Approved** the Minutes as submitted.*

**24. JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES FOR JUNE 2, 2004.**

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**Action:** Approved the Minutes as submitted.

## ***City Council Action***

### **PUBLIC HEARINGS:**

**25. ZONING AMENDMENT, ZA-04-01; DEVELOPMENT AGREEMENT, DA-04-10: TILTON-GLENROCK – Ordinance Nos. 1679 and 1680, New Series**

Planning Manager Rowe presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

**Action:** On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) Waived the Reading in Full of Ordinance No. 1679, New Series.

**Action:** On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council Introduced Ordinance No. 1679, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT AND THE APPROVAL OF A PRECISE DEVELOPMENT PLAN FOR PHASE 6 OF THE CAPRIANO/MADRONE CROSSING DEVELOPMENT. THE RESIDENTIAL DEVELOPMENT PLAN COVERS A 68 ACRE SITE LOCATED ON THE WEST SIDE OF MONTEREY ROAD, SOUTH SIDE OF TILTON AVENUE, ON THE EAST SIDE OF HALE AVE. (APN's 764-09-005, 006, 007, 008, 009, 010 & 014) (APPLICATION ZA-04-01: HALE-GLENROCK BUILDERS) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.**

**Action:** On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) Waived the Reading in Full of Ordinance No. 1680, New Series.

**Action:** On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council Introduced Ordinance No. 1680, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA 04-01 FOR APPLICATION MP-02-03: TILTON-GLENROCK (APNS 764-9-06, 16, 17, 32 & 33) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.**

**26. DEVELOPMENT AGREEMENT AMENDMENT, DAA-00-01: CHRISTEPH-KOSICH – Ordinance No. 1681, New Series**

Planning Manager Rowe presented the staff report. He informed the Council that prior extensions were due to the need to obtain various permits and to complete the environmental process. The hold up for the project that necessitates an extension is a requirement for the path. At the time the commitment was made, the project proponent owned both parcels but has subsequently sold lot 2 and that it is now owned by a different party. He stated that the new property owner does not see a benefit to having a path as they do not plan on using it and have concerns about security and privacy. He noted that there are trees that line the private drive that would be impacted by the installation of the path. He informed the Council that the Planning Commission allowed for an amendment to occur such that the applicant be allowed to work with the City to provide an alternative commitment. He stated that the recommended action is to amend the development agreement to allow for the removal of the path requirement and for the applicant to provide an alternative, safety improvement, for the same points, and to grant the request for a sixth extension in which to commence construction.

Council Member Tate said that it was his recollection that when there are agreements in Measure P to proceed with a commitment that benefits a neighbor or neighborhood, the applicant had to submit a preliminary agreement that this would be done.

Planning Manager Rowe informed the Council that at time of submitting a Measure P application, Mr. Kosich owned both lots. He has since divided the property and sold lot 2 to another party. Therefore, the agreement no longer applies.

Council Member Carr said that there appears to be two items that are outstanding that are delaying the project. It was his belief that there are now solutions to both of these items. He inquired whether a six month extension was necessary as it would place the project in a position of building during the rainy season. He said that it appears that the City routinely applies a minimum six month extension. He recommended that extensions be considered in terms of the amount of time needed, especially when you look at pushing back construction timelines into rainy seasons, creating the possibility of having to come back and request another extension.

Mayor Kennedy opened the public hearing.

Mr. Kosich, applicant, indicated that he has an agreement with the individuals he sold the parcel to. He said they have expressed concern with security in having a path going up to their house. He stated that he would be willing to spend the money somewhere else in lieu of installing a path and widening the driveway as the property owner is concerned about the removal of trees as well. He indicated that the Fire Department has stated that he does not have to widen the driveway. He said that he plans to live in the neighborhood and that he would like to get along with the neighbors. He said that his house plans are in plan check. He said that in order to get the property owner to sign the parcel map, the property owner needs to know that the changes will not encroach onto his property with this development. If he can get the adjacent property to sign the parcel map, he would be willing to proceed with construction.

No further comments being offered, the public hearing was closed.

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**Action:**      *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1681, New Series.*

**Action:**      *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council **Introduced** Ordinance No. 1681, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1617, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-99-04: CHRISTEPH COURT - KOSICH TO INCORPORATE A SIX-MONTH EXTENSION OF TIME FOR A SINGLE DWELLING UNIT AND TO ALLOW FOR AN ALTERNATIVE MEASURE P COMMITMENT IN LIEU OF A FIVE-FOOT PATHWAY (APN 764-32-024)/(DAA-00-01: CHRISTEPH - KOSICH)** by the following roll call vote: **AYES:** Carr, Chang, Kennedy, Sellers, Tate; **NOES:** None; **ABSTAIN:** None; **ABSENT:** None.*

**27.      DEVELOPMENT AGREEMENT AMENDMENT, DAA-03-10: COCHRANE-COYOTE – Ordinance No. 1682**

Planning Manager Rowe presented the staff report, indicating that staff distributed to the Council this evening an item at the request of Mr. Oliver that lists upgrade items that are incorporated into the market rate units and the standards that are applied to below market rate units. In the development agreement, there is reference that items for the BMR units need to be comparable to the market rate units. He stated that the list of standards that will be applied to BMR units has been reviewed by the housing division who oversees the BMR program. He informed the Council that staff finds the changes requested acceptable and recommend approval. Staff will modify the section in the development agreement to reference the handout as an exhibit.

Mayor Kennedy opened the public hearing.

Dick Oliver, applicant, apologized for bringing up the proposed modification at this late date. He said that the request comes about because he has increased the standards in the market rate housing to a level where it used to be optional upgrades. It was his belief that his BMR homes are the finest quality in the City. He said that the BMR units will keep the standard features that are appropriate. He requested that the Council approve the standards for BMR units.

No further comments being offered, the public hearing was closed.

**Action:**      *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1682, New Series.*

**Action:**      *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1681, New Series, by Title Only as follows: **AN***



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***ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL  
APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT, DA 03-  
10 FOR MP 02-14: COCHRANE – COYOTE ESTATES (APNS 728-35-008, 010; 728-  
36-001, 010), amending the development agreement to incorporating the standards for  
BMR units per the list presented by the applicant, by the following roll call vote: AYES:  
Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

**28. INTERIM USE PERMIT UP-04-07: DEPOT-DAYWORKER CENTER – Resolution No. 5803**

Planning Manager Rowe presented the staff report. He informed the Council that the Planning Commission recommends that the applicant provide a more detailed exit plan. He indicated that a supplemental handout was distributed this evening that provides further explanation of the applicant's exit plan. He stated that the exit plan does not meet all the requirements contained in the ordinance for an exit plan. He said that the Council could include a condition in the resolution that would require the applicant to work with staff to refine the exit plan and that the plan return to the Council for approval.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Council Member Tate stated that he served on the committee along with Joe Mueller that studied the interim use permit process. He said that it was his recollection that the committee felt that the City needed a very thorough exit plan before agreeing to the use. The Committee did not believe that the City should receive an exit plan after the fact. However, he did not recall whether the Committee defined the contents of the exit plan and that he does not see the exit plan defined anywhere. He felt that the Council needs to define what is meant by a complete exit plan. It was his belief that an exit plan needs to talk about the exit steps to be taken from day 1. He stated that he was not comfortable that the Council does not have the exit plan it believes was necessary before approving the temporary use permit.

Joe Mueller concurred that the committee was concerned about the exit plan, indicating that the Planning Commission had the same concerns. He indicated that the zoning code contains a list of several items. At the Planning Commission meeting, the applicant stated that they were having a problem looking that far forward into the future as they were trying to get through initial hurdles. He stated that he has not yet had the opportunity to review the document presented to the Council this evening. However, it was his belief that it was an issue of timing and that he was not sure as to the impact on the applicant. He said that the Planning Commission expressed concern but kept the temporary use permit moving forward based on the fact that it was staff's belief that the applicant could complete an exit plan prior to coming before the Council.

Council Member Carr stated that he had similar concerns. As this is the first time a temporary use permit is being requested, he felt that the City needs to provide some flexibility and figure out a way to make this work. It was his belief that the City would be presented with an exit plan that would identify what would take place in year three so that the exit plan would not be decided along the way. If in year three there is not a defined exit plan, pressure is not placed upon the Council where it is stated that the

use exists and that there is no need to change the location of the use. He felt that the Council could find some way/flexibility to accommodate the exit plan and not delay opening the center.

America Romero indicated that she was not the author of the exit plan presented to the Council this evening. She stated that it was her belief that the dayworker committee was given certain guidelines to follow. She said that as far as the dayworker committee was concerned, they followed the guidelines. If the dayworker committee were to be given a more detailed questionnaire as to what to address, they would be able to do so.

Council Member Carr recommended that the Council approve the temporary use permit with a one year contingency, requiring that the exit plan be completed. Further, requesting that staff work with the Planning Commission on the exit plan and that the exit plan return to the Council for review and approval. He made this recommendation in order to avoid delaying the opening of the dayworker center.

Council Member Chang recommended that the item be approved this evening and that an occupancy permit not be issued until the exit plan is approved. She felt that drafting of the exit plan would only take a couple of months, working with staff. She said that there were 3-4 items that need to be completed interior to the building as well as the parking lot and the drainage plan. She felt that the improvements can be completed in six weeks if work proceeds in full force by the dayworker committee. The only item of concern is that Mr. Weston is having a problem with the offsite improvements and that it may take 2-4 four months to resolve this issue.

City Manager Tewes said that Mr. Weston is responsible for the construction of certain public improvements to allow both the dayworker center and his adjoining property to be developed. He indicated that Mr. Weston has asked City staff a series of questions whether exemptions could be made to certain requirements. Staff has advised Mr. Weston that the ordinance is clear on some of these and that the City could not grant exemptions. He said that staff is not aware of Mr. Weston's construction schedule but that he knows that the dayworker center's ability to open is dependent upon his ability to finish the public improvements.

Council Member Carr felt that the suggestion that Council Member Chang made was a better suggestion. He said that Mr. Weston indicated a couple of weeks ago that the opening of the center was eminent, pending one item he needed to work out with public works staff. To hear that there is 3-4 months worth of work means that there is a lot of time to work on the exit plan. He felt that there was a lot of work that needs to be done and that he would appreciate the help of the Planning Commission in working on the exit plan. He felt that Council Member Tate came up with a good suggestion that the Council needs to develop standards for an exit plan. He recommended that the Council approve the temporary use permit, making the occupancy contingent upon the finalization of the exit plan.

Planning Manager Rowe read into the record the language contained in the ordinance as to what is required for the exit plan as follows: 1) The plan requires a timeline for the purchase or lease of a permanent site. 2) The availability of economic resources sufficient to move to the alternate site including but not limited to where such resources shall be received and whether such resources are dependent upon future funding efforts. 3) A plan for moving operations to the alternate site, including

personnel responsible for administering such operation. He said that items 2 and 3 are not well articulated in the exit plan submitted this evening.

Council Member Tate felt that the timeline contained in the exit plan submitted this evening could be much more thorough.

Council Member Carr said that it was his recollection that the ordinance stipulates that the exit plan is supposed to be in place before approving the permit. Therefore, the Council is making an exception; requesting the submittal and approval of the exit plan prior to the issuance of an occupancy permit.

**Action:** *On a motion by Council Member Carr and seconded by Council Member Tate, the City Council unanimously (5-0) **Adopted** Resolution No. 5803, Approving an Interim Use Permit for the Day Worker Center, withholding the certificate of occupancy until such time that the exit plan is submitted and approved by the City Council.*

**29. AN ORDINANCE AMENDING SECTIONS OF THE MUNICIPAL CODE REGARDING MESSAGE ESTABLISHMENTS – Ordinance No. 1683, New Series and Resolution No. 5804**

Police Lieutenant Sampson presented the staff report. He informed the Council that based on a fee study, staff found that the City of Morgan Hill was at least \$100 or more lower in terms of the application and processing fees. He said that the City was starting to receive an influx of applications from individuals with correspondence courses. He said that the City received citizen calls and raised issues to light. He informed the Council that staff wanted to curb the potential for Morgan Hill to become a place where it is an easy target for illegal message activities to take place. Therefore, staff recommends Council approval of the changes to the message ordinance.

City Attorney Leichter stated that the fee increases are based on the City's estimation of actual staff time incurred to implement the ordinance.

Mayor Pro Tempore Sellers felt that staff did a good job in updating the message ordinance. He said that this was a difficult issue, when first confronted, as the City was trying to balance the needs of a legitimate business enterprise while curtailing illegal activities. He said that he wanted to make sure that the City was not going to preclude legitimate activities in the future.

Police Lieutenant Sampson informed the Council that Morgan Hill was the only community who accepted correspondence courses. He spoke with different reputable schools of massage. He indicated that these individuals stated that you need a minimum of 100-150 hours of practical experience. He stated that many of the schools are providing 300-500 hours of hands on experience.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

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**Action:**      *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1683, New Series.*

**Action:**      *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council **Introduced** Ordinance No. 1683, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 5.32 (MASSAGE ESTABLISHMENTS) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING REGULATION OF MASSAGE ESTABLISHMENTS AND PRACTITIONERS** by the following roll call vote: *AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.**

**Action:**      *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Adopted** Resolution No. 5804, Governing Fee Changes.*

## ***City Council Action***

### **OTHER BUSINESS:**

#### **30.      REQUEST TO EXTEND PROVISIONS OF ORDINANCE NO. 1641, NEW SERIES**

Planning Manager Rowe presented the staff report, indicating that Ordinance 1641 was adopted by the City Council in November 2003 in response to the high cost of construction liability insurance for attached housing units. He said that the ordinance was enacted for a two-year period and that it applies to the building allocation for Fiscal Year 2003-04 and 2004-05. He indicated that paragraph 15 of the ordinance contains a provision for an exemption that would allow for attached units to be detached (a modified setback arrangement) for an additional year if it is determined that the insurance problem still exists and there have been no reforms enacted through the state legislature to resolve the problem. He indicated that at the time the ordinance was written, it was intended as a temporary fix to allow for a modified setback with the hopes that the insurance situation would resolve itself. He said that the City would be creating small, single family detached lots. He said that the City has not had these types of units built to see what they would look like, aesthetically, and whether the City needs to make modifications to the standards. He stated that there is a z-lot configuration being proposed in the Capriano project where the units are sited further apart. However, he noted that you would still have narrow and small lots. He said that this was not something that the City wanted to adopt as a standard. He noted that the General Plan Land Use Element contains policies that address the number of detached units that can be constructed in a multi family development (e.g., less than 25% of the overall units). He informed the Council that the Planning Commission directed that the developer of the Capriano project submit a development plan that addresses the rest of the project. He said that each time the City works around the issue and not address this type of development; it limits the option for a portion of the R-2 project. The plan, as proposed, shows single family attached units that would cause the project to be prohibitive based on the insurance situation. The plan proposed, if the ordinance is extended, would

result in 100% detached dwelling units in an R-2 portion where the general plan policy stipulates only 25% can be detached units. To extend the ordinance would be inconsistent with the City's General Plan and would create a narrow, small lot, detached category. He requested Council direction as to whether or not to extend the provision of the ordinance. If so, staff would need to return to the Council with an ordinance amendment for its consideration.

City Manager Tewes noted that the City has a request from a developer that the City extend the interim ordinance for an additional period to allow him to submit a map that is consistent with the modified approach. Should the Council agree that it wishes to extend the interim ordinance, staff would return with the appropriate ordinance to accomplish the Council's direction. In any event, the map must comply with the General Plan that does not allow all of the units in an R-2 zoning district to be of this type of housing product. He informed the Council that staff is bringing the request of Glenrock Builders to the Council's attention. Staff is asking the Council whether it wishes staff initiate an amendment to the ordinance to allow for its provisions to be extended under the circumstances described by Mr. Rowe. An alternative would be to not extend the ordinance and have the annual review contemplated by the ordinance later this year.

Mayor Kennedy opened the floor to public comment.

Rocke Garcia informed the Council that he submitted a vesting tentative map for the balance of the project in conjunction with his Measure P application. He said that Ordinance No. 1641 specifically calls for z-lots. He said that the z-lots were developed by the architects for his project who are based out of Orange County. He noted that the z-lots are proposed along Daugherty Avenue where one garage sits to the back or the front. He said that the objective of the original application was to place the garages in a carriage way or alleyway in an R-2 product. He said that he and his architects strived not to create a series of garage doors one after another. In the Carriage project, he tried to place the garages to the rear in an alleyway so that you would see fronts of houses, porches and a very invited front scene. He felt that it was the intent of Ordinance No. 1461 to create an interest and still have the feeling of attachment. He said that the z-lots give you the attachment because each side of the garage lines up and gives the appearance of attachment. He stated that he had to submit what the Council approved earlier this evening because he could not show the z-lots being attached. He said that he is developing 45 lots and that he has 5 different and distinct floor plans. He said that this is a difficult subject that is caused by insurance problems and that the problem is not getting better. He requested the ability to continue with his project and that the Council instructs staff to process a z-lot product.

Planning Manager clarified that the General Plan states that less than 25% of the units can be detached in an R-2 zoning district. He said that what Mr. Garcia is requesting detached units in a portion of the R-2 project. He stated that a way to work around the general plan issue is to amend it and have the project rezoned to R-1 that allows for 100% z-lots and modified setbacks. He said that it is not known whether the insurance problem would be the same 2-3 years from now. Alternately, the land use policy could be amended to state that the City will allow a greater percentage or all of the units to be detached; using modified setbacks or the Council could amend the land use plan to designate the project as single family in order to address the general plan issue.

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Council Member Carr inquired what the amendment would do to the price of a home moving from a purely attached product to a z-lot product.

Mr. Garcia said that a z-lot product would be significantly more expensive to construct because you have more driveway, an exterior wall and roofline that is detached. He said that the price of the z-lots is determined by the market place. He said that 10% of the units are committed to be sold at a moderate affordable rate.

Dick Oliver stated his support of Mr. Garcia's position for a different reason. He said that he has three projects that fall under this situation. The first group of units would be built as modified detached and then come back to the Council to see if it likes them. Should the Council like them and the insurance situation is still the same, he will ask the Council to extend the ordinance at that time. He said that his situation is unique as he has a property owner who has asked that he develop a five acre parcel located at the corner of Wright and Hale Avenues. He said that the problem with the site is that it is situated low and that the Santa Clara Valley Water District wants to take 100 feet of the land in order to extend Llagas Creek and Santa Clara County wants to extend/widen Hale Avenue to 55 feet. He stated that he is trying to figure out a way to design/lay out 24 units that makes sense as the geometrics does not work. By extending the ordinance, it gives him a chance to design a unique/creative project on this particular parcel, similar to a flag lot configuration.

No further comments were offered.

Mayor Kennedy noted that Mr. Heichtman is requesting that the Council initiate proceedings to amend the City's modified setback ordinance.

City Attorney Leichter clarified that should it be the Council's desire to initiate proceedings to amend the City's modified setback ordinance, staff would return to the Council with an extension of the ordinance and with language that clarifies precisely some of the permutations under the ordinance.

Mayor Pro Tempore Sellers inquired why you would attach two units.

Mr. Rowe said that their scale and massing is comparable to single family detached on adjoining lots so that they integrate better. Also, the cost for construction would be less, placing insurance aside. He said you are able to accomplish moderate and BMR units with attached units.

Mayor Pro Tempore Sellers said that if the City is able to achieve many of the benefits in a different way, it may be worth considering. He appreciated that this would take extra staff work but felt that this might be an opportunity for the City to be more creative. He felt that there might be additional benefits if the City moves toward this direction.

**Action:**        *It was the consensus of the City Council to **Request** staff to initiate proceedings to amend the City's modified setback ordinance.*

City Attorney Leichter noted that staff indicated that the cost to process the zoning text amendment would be \$4,612. It was her belief that Mr. Heichtman, on behalf of Mr. Garcia and Glenrock Builders, have requested that this fee be waived. She requested Council direction on whether it wishes to bring back a waiver of these fees.

Mayor Pro Tempore Sellers noted that Mr. Hechtman argues that the application fee burden should not be borne by the applicant given that this is the direction being imposed. However, he noted that a benefit is being accrued.

Council Member Tate noted that everyone has the same insurance problem.

Mr. Garcia stated that he would agree to pay the cost for the text amendment and that those who benefit from this ordinance amendment could reimburse him.

**31. HEARING FOR EXEMPTION TO UNDERGROUNDING OF UTILITIES – 600 TENNANT AVENUE**

Director of Public Works Ashcraft presented the staff report, indicating that the developer has requested that he be allowed to pay in lieu fees rather than underground utilities. He stated that staff agrees that it would be more cost effective and a project could be constructed a lot cheaper if constructed in a large scale. Therefore, staff supports the developer's request.

Mayor Kennedy opened the floor to public comment. No comments were offered.

**Action:** *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Granted** the Exemption to the Requirement to Underground Utilities with Payment of In Lieu Fees for the Proposed Development at 600 Tennant Avenue.*

**32. SETTING OF ANNUAL PUBLIC HEARING FOR FOX HOLLOW-MURPHY SPRINGS LIGHTING AND LANDSCAPE ASSESSMENT DISTRICT – Resolution Nos. 5805, 5806, 5807, 5808, 5809, 5810, 5811, 5812 and 5813**

Council Member Chang indicated that she has a conflict with item 32c.

City Attorney Leichter indicated that it is her belief that Mayor Kennedy has a conflict with item 32b. She stated that it has been the City's practice that the entire Council stays to hear the item presented as each Council member will be voting on item 31a. Those members who have individual conflicts can step down from b and c or that Mayor Kennedy and Council Member Chang can step down for the entire item.

Deputy Director of Public Works Struve presented the staff report, indicating that staff is recommending a rate increase in 3 of the 20 sub areas for fiscal year 2004-05. He stated that this affects 141 of the 755 property owners within the Fox Hollow/Murphy Springs landscape and lighting district.

Mayor Kennedy opened the floor to public comment. No comments were offered.

**Action:** *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Adopted** Resolution Nos. 5805, 5806 and 5807, **Excluding** the Conte Gardens and Sandalwood Estate Zones.*

Mayor Kennedy recused himself from action item 32b and stepped outside the Council Chambers.

**Action:** *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Kennedy absent, **Adopted** Resolution Nos. 5808, 5809, 5810,, **Referring Only** to the Conte Gardens Zone.*

Mayor Kennedy resumed his seat of the dias.

Council Member Chang recused herself from action item 32c and stepped outside of the Council Chambers.

**Action:** *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Chang absent, **Adopted** Resolution Nos. 5811, 5812, and 5813, **Referring Only** to the Sandalwood Estates Zone.*

Council Member Chang resumed her seat on the dias.

**Action:** *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Directed** the City Clerk to Notice a Copy of the Resolutions.*

### **33. REVENUE INCREASE REVIEW**

Finance Director Dilles presented the staff report.

Mayor Kennedy stated that the City has to come up with \$1.2 million to balance the budget, noting that staff has cut \$900,000 from next year's budget.

Mayor Pro Tempore Sellers said that the City has projected into subsequent years of anticipated expenditures, revenues and reserves. He stated that at the end of a five year projection, the City would still maintain a 25% reserve of general fund revenues. He said that although prudent in normal times, he expressed concern as to the appropriateness of 25% in reserves given that the City is asking for additional resources. He inquired whether there was a possibility or resolution that might include some reference to the reserve level to indicate what the reserve level will be at the point where the Council collects additional revenue. Conversely, before collecting additional funds, the reserve levels would need to be at a lower point.



Finance Director Dilles said that you should not look at the level of reserves and that focus has been given to balancing revenues and costs. In order to achieve this balance, the City will need to make structural changes. Therefore, the City would need to look at both sets of circumstances.

Mayor Pro Tempore Sellers said that the reason for having the discussion this evening is due to the fact that the City anticipates that its revenues will not meet its costs as projected in the future. He felt that the Council needs to factor in reserves because the voters will. He did not believe that it would be appropriate for the Council to go to the voters and state that it has a plan that takes all this information into account.

Mayor Kennedy felt the problem that the City faces is a structural problem. He said that the City will be utilizing its reserves over the next 3-4 years. Unless the City fixes the structural problem, the City will be drawing down its reserves. He said that the City has demonstrated that by cutting \$900,000 from the City's budget that this Council has taken action of being responsible and cutting expenses. He noted that the City is decreasing its park maintenance. Also, the City has frozen hiring of employees, resulting in sharing in responsibilities and placing additional workload on all employees. He said that this is a City that is operating and has always operated on a very lean budget. He stated that this is a time where new revenue sources are needed. He felt that the Council needs to place options on the ballot for voters to make a rational decision. He recommended that the Council take action to place a ¼% sales tax measure on the November 2004 ballot. This revenue would give the City the opportunity to close the gap not the fault of the City but due to take aways from the State of over \$500,000 of the City's Vehicle License Fees. In addition, the City will be giving the State another \$360,000 each year for the next two years. He said that the City has done its job and that the Council needs to ask the voters if they are willing to pay to provide the services that are desperately needed to maintain a quality of life.

City Manager Tewes said that whenever the City proposes new taxes, under proposition 218, it requires a vote of the people. He said that as a general law city, it is authorized to place before the voters several tax measures, one of which is a ¼ cent sales tax if used for a general purpose. If used for a general purpose, it must be placed on the ballot on the same election that council members stand for election. He said that in working with the City Clerk and the County Elections office, it has been determined that all paper work must be ready by July 21, 2004 to place a tax measure on the November 2, 2004 ballot. He takes the Mayor's suggestion to be a request that the appropriate paperwork be drafted and presented to the City Council for the calling of an election and proposing a new tax for the November 2, 2004 ballot.

Council Member Tate said that in the presentation made by City Treasurer Mike Roorda at the previous meeting, there was a table presented that depicted all revenue options. He stated that he was interested in investigating further the fire suppression district. However, he did not understand how the amounts were derived. He felt that there may be variables that the Council may choose from. He inquired whether the \$4 million figure was a recommended amount. He also inquired as to the reason for the \$800,000 recommendation for the lighting and landscape district.

Finance Director Dilles responded that the number was an identified amount but that it could be less than the amount listed.

City Treasurer Roorda said that there were a number of items where the Council had some level of discretion in terms of how it would structure a tax. He said that staff calculated an estimate where staff felt it best represents what the tax might be able to generate for the City but that the Council may wish to adjust the amount to be collected as it moves toward a final recommendation. He said that there were a couple of items where the Finance & Audit Committee did not feel were good to siphon the number down. In such cases, it was indicated that the fee was to be determined.

Council Member Chang inquired how you would determine the amount of revenue to be generated with a  $\frac{1}{4}\%$  sales tax. She noted that it was indicated that a  $\frac{1}{4}\%$  sales tax could generate \$1.1 million in revenue. She inquired as to the consideration for recommending the  $\frac{1}{4}\%$  sales tax as the way to proceed.

Mayor Kennedy noted that staff has indicated that the  $\frac{1}{4}\%$  sales tax would raise \$1.1 million annually. The City's structural deficit is \$1.2 million. He felt that the  $\frac{1}{4}\%$  sales tax comes close to closing the gap. How did not know how staff determined that the  $\frac{1}{4}\%$  sales tax would generate \$1.1 million.

City Manager Tewes indicated that staff took 25% of the existing sales tax revenue and assumed that this additional tax would have no adverse affect on sales because of the increase tax.

Council Member Chang said that she and Council Member Carr worked through an elaborate matrix system. They suggested a criterion for individuals to consider. She felt that if it is a well prepared/thought out tax, it would be supported by the voters.

Mayor Kennedy indicated that his  $\frac{1}{4}\%$  sales tax recommendation is a general tax that would require a majority vote whereas some of the others would require two-thirds voter approval. He said that fees, with the exception of the 911 emergency dispatch fee, would require voter approval. In terms of the likelihood of support, he felt that the  $\frac{1}{4}\%$  sales tax would have a greater chance of being supported by a majority of the voters and that it closely matches the gap that needs to be filled. Should the Council decide to place the  $\frac{1}{4}\%$  sales tax on the ballot, he recommended that it have a 2-year sunset. At the end of this period, the Council can assess whether the tax needs to continue.

Council Member Carr did not believe that a sunset clause would address the structural need. He felt that the Council needs to have a lot of discussion and figure out how this might work so that it does not place the City into a structural problem again. He inquired whether there were any other cities in the county that have their own sales tax rate. He felt that a sales tax is a county-wide tax and that citizens expect to pay the same in one city that is paid in another city in the county.

Finance Director Dilles said that a new law allows cities to implement a sales tax on their own. He stated that it used to be that it had to be a countywide sales tax and that an individual city could not implement its own sales tax without special legislation. He said that he is aware of some cities who will be conducting an election on sales tax.

Council Member Carr stated that he was not generally opposed to the  $\frac{1}{4}\%$  sales tax but felt that there are some questions that need to be answered before proceeding with any of the revenue enhancement items.

He stated that he needs to understand and have a good community dialogue on the feasibility of increasing the cost of any product in Morgan Hill by  $\frac{1}{4}\%$ , including what it would do to economic development in Morgan Hill. What will it do to sales in Morgan Hill and to small shops? He felt that there were other questions that need to be answered as well. He inquired whether the Council was set on finding one option that would answer the dollars needed. Is the Council willing to examine smaller options that would spread the burden across the community in a fair way? He said that one of the issues the Finance & Audit Committee struggled with is that of user fees. A question was whether the City should try to get as much cost recovery that it can from user fees before going to the voters for a broad based tax increase. He noted that he and Mayor Kennedy are taking up the question about incremental economic development, including examining inhibitors to economic development put together by staff. He said that the Economic Development Subcommittee will be bringing back a recommendation to the Council soon. This will allow the Council to discuss additional economic opportunities and how this can help the City. He felt that these were the types of discussions that the Council needs to have, whether it is the five Council members or a greater community dialogue, before he is willing to identify one revenue source over another.

Council Member Tate did not know what  $\frac{1}{4}\%$  in sales tax would do to large ticket items. He noted that the City wants to attract other auto dealers and that when an individual goes shopping; this is where the  $\frac{1}{4}\%$  can make a difference.

Mayor Kennedy agreed that dialogue and discussion was important but acknowledged that the City is running out of time if it is in fact interested in placing a measure on the November 2004 ballot. With respect to economic development and structural deficit, he stated that economic development will allow the City to close the gap, if successful. He said that there is no guarantee that economic development would close the gap.

City Manager Tewes stated that if it is the Council's intention to place a measure on the ballot, the Council would need to make a motion to initiate the preparation of all necessary documents. He said that it would take 2-3 weeks to complete the documents for a ballot measure.

Council Member Chang felt that a well planned tax that passes would mean a lot versus hastily placing a tax measure on the ballot just because timing is close. It was her belief that the City should be conducting a community survey to see what a tax would be used for (e.g., police, additional services). She recommended that a public opinion poll be conducted. She did not believe that voters would support a new tax if it solely maintains existing services. Should the Council be interested in placing a measure on the November 2004 ballot, she requested that the City receive public input in order to get a sense of community support. If talking about a true structural change, she felt that the process needs to be done correctly.

Mayor Pro Tempore Sellers indicated that in order to conduct a survey correctly, it would take six weeks to conduct.

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Finance Director Dilles indicated that a fire suppression tax would be a parcel tax to be voted upon by the 8,500 residential parcels, whether they reside in Morgan Hill or not. He said that it would take a majority vote to approve a fire suppression tax.

Council Member Chang said that it was her recollection from the last report prepared by the Economic Development Subcommittee that it projects approximately \$250,000-\$300,000 additional revenue for the next year. Therefore, the City does not necessarily need \$1.2 million. Therefore, the \$800,000 that can be generated from a 911 dispatch service fee may work.

Council Member Carr felt that the City could structure something like a fire suppression district (parcel tax).

Finance Director Dilles clarified that staff was not suggestion that the City raise \$4 million but that it was trying to show a range of possibilities. He said that the fee could include the cost of the fire contract, building a new station, and completion of a new fire master plan. He said that one issue that might arise for building a fire station is the fact that the City is collecting development impact fees for this purpose.

Council Member Tate noted that you need a full crew to operate a new fire station, noting that the City has impact fees to build a fire station.

City Manager Tewes clarified that \$4.1 million has been budgeted next year for existing services. The contract provides that should the City establish a third fire station and staffing, it would result in an additional \$2 million.

Council Member Carr indicated that the City could design a fire suppression district that does not necessarily cover the entire contract but covers enough of the contract to be able to pull out of the contract the structural deficit in the general fund.

City Manager Tewes said that if the City is trying to find resources to meet one of its most important services. He said that the City can conduct a city parcel tax or a city-wide Mello Roos district in order to pay the funds for the operation of a fire station. Should the Council wish to focus on fire, there are different ways to approach funding such as a fire suppression district that requires the establishment of a district, approval by Lafco and a number of other actions. He said that the Council's current policy, with respect to fire, is that the City has a contract with County Fire that extends until September 2007. During the intervening period, staff is to work with the City's neighbors to see if a regional district could be created. The district idea has come up in context if trying to figure out how it would get the rest of the unincorporated areas, and perhaps Gilroy, to join in a south county district approach.

City Attorney Leichter said that the Council needs to understand that unlike the City's current contract with County Fire where the City retains authority over the fire function, the Council would be ceding its authority over the fire functions with a South County fire district. The City would not longer be responsible for fire services as it would be under the auspices of a Fire Protection District with its own governing board.

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Mayor Pro Tempore Sellers stated that he was not necessarily in concurrence with the election timeline as far as placing an item on the fall 2004 ballot.

City Manager Tewes informed the Council that at its June 23 meeting, staff will identify the various filing dates for the City of Morgan Hill's election. Staff looked at the currently scheduled Council meeting against the election requirements and noted that the Council meeting prior to the date by which all documents must be into the County Registrar's office is July 21. He said that staff has built in some opportunity for checking documents to make sure that the important matters such as an election is not missed by pushing a measure to the eleventh hour. Should the Council wish to hold a special meeting for the purpose of placing a measure on the ballot, the Council could push the dates even further.

Mayor Pro Tempore Sellers said that he appreciates the significant amount of work that has been conducted by the Finance & Audit Committee. He stated that he wished that the work had been completed sooner so that the Council could have had more time to give it consideration for this fall. However, he was not sure whether the Council needs to move forward this fall. He felt that it was imperative that the Council address the question of the reserve. He stated that he was not convinced that 25% is the right point at which the Council should be going to the voters and that it is the right level to declare an emergency. He felt that the Council has a lot of alternatives to be considered. He noted that a sales tax is regressive. He stated that individuals and families of lower income will pay a higher percentage of their income toward a sales tax and expressed concern that it would be a greater imposition on them than it would be on those with a higher income level. He stated that he was not prepared to make a decision this evening. Should the Council move quickly out of concern for the fall timeline, there are questions that would be raised that the Council cannot answer at this time and that it would be facing in the fall without adequate information. He recommended that the Council give this issue final consideration on July 28. He said that this might be a point at which the Council would make a final decision. He said that having a special meeting would have the added benefit of giving attention to this issue and perhaps would engender a broader base support/community input that would plant the need for a survey. He appreciated the fact that Mayor Kennedy stepped forward with a preference, but that he was not ready to support this one or any other option this evening as there are other items to consider.

Mayor Kennedy noted that the Council worked extensively on establishing this level of reserve, agreeing to this reserve level at the January 2004 workshop. The Council agreed to spend down the City's reserves in a responsible manner, yet keeping a sufficient reserve for future emergencies. He inquired what Mayor Pro Tempore Sellers would suggest is a timeline for an election calendar.

Mayor Pro Tempore Sellers stated that the Council could consider a measure on July 21 or July 28, 2004. He said that he was not ready to proceed this evening as there are too many considerations. He said that he was struggling with a fire suppression district and its implications. He said that the majority of the revenue alternatives do not require the City to move forward in November 2004. However, some of the more attractive ones such as the sales tax would require the City to place a measure on the ballot this fall.

Mayor Kennedy said that in order to have a public dialogue, the Council needs to start its discussions. He said that July 21 would be the absolute latest date that the Council needs to state whether it wants to consider the option of placing a measure on the November 2004 ballot in order to give staff time to complete all the election documentation.

Council Member Tate said that he raised the fire suppression item previously. He noted that the Council adopted a strategy to maintain the City's existing budget but were not able to provide new services at its January 2004 workshop. He said that in order to meet the City's fire master plan and provide adequate safety services to the community, the Council needs to increase fire revenues. He did not know whether the increased revenues should come from a fire suppression district or one of the other alternatives. He sees the fire suppression revenue being used solely for the expansion of fire services. When he looked at the alternatives for increasing income, he did not review the sales tax column. He said that a utility user's tax is an accepted revenue source by many communities. It is fair and less regressive than a sales tax and does not have the penalty of having individuals shopping elsewhere because the City may become a community that has an extra tax. When he looked at alternatives of what should be done short term, he felt that the City could make a case for a utility users tax if it is sold to the public for the benefits it would accrue and not point to its history in the community.

City Treasurer Roorda stated that the Finance & Audit Committee wanted to make an attempt to provide the Council with some tools to help assist with discussions. He inquired whether it would assist the Council to organize its discussions along the lines of some of the items identified this evening such as fairness and equity, neutrality, and certainty. Each Council member can record its own emphasis, noting that time may be another critical factor.

Mayor Kennedy recommended that the Finance & Audit Committee develop a matrix that it believes would assist the Council as a tool to help guide it through discussions.

Council Member Carr said that a matrix has not been presented to the Council as the Finance & Audit Committee did not want to direct the Council's discussion in a pointed fashion by including it in the packet.

Council Member Chang inquired whether it would be possible to narrow down the taxes the Council is willing to consider to 3 or 4, using an evaluation criterion. As an alternative, the Council selects 3 or 4 important measures and conducts a public opinion survey in order to obtain feedback as to what would be acceptable to the public. She said that she hears the Council supporting four items: a sales tax, utility tax, fire suppression tax, and emergency fees. She inquired whether it would be possible to develop a questionnaire and poll the general public.

Mayor Kennedy recommended that the Council be given a copy of the matrix. The Council could rate its options, and discuss this item further on July 7, 2004.

Mayor Pro Tempore Sellers stated that he found matrixes to be valuable. He concurred that the Committee should have provided the Council with a matrix. The Council can take a look at the matrix by July 7 and narrow the revenue options to four, refining as deemed appropriately.

Council Member Carr stated that he was not sure whether it was the task of the Finance & Audit Committee to bring back a recommendation to the Council. He said that the Committee struggled with this fact. The Committee continued to refer to the goals from the Council's goal setting session, noting that this was not what was being asked of the Committee. Thus, one of the reasons the Committee did not include a matrix for Council consideration. He said that the matrix may have been a good discussion starter for the Council. He felt that it was the Committee's task to bring a process forward to talk about these issues. The Committee presented several questions and several sets of criteria. He said that the Council has focused on item 4, taxes, and not the other questions.

Mayor Pro Tempore Sellers said that it would be important for the Council to review the matrix and the numbers as it would be a valuable tool.

Council Member Tate expressed concern with identifying four revenue alternatives. He stated that he was interested in doing something with fire for the additional service to be provided. He said that if what the Council is looking at with this exercise is only to maintain existing services, he did not believe that the fire needs would fall under this category. He said that he would support additional fire services.

Council Member Chang recollected that a prior survey indicated that citizens would not support a tax if the City is only maintaining current services and not providing additional services.

Council Member Carr noted that the Finance & Audit Committee felt that the Council needed to answer why revenue increases are needed. Is it needed to cover the gap, or was it needed to cover the gap and provide additional services? He felt that this is a question that each Council member needs to answer.

Mayor Kennedy opened the floor to public comment. No comments were offered.

**Action:** *It was the consensus of the City Council to **Direct** the Finance & Audit Committee to provide it with the matrix in advance of the July 7 meeting to allow the Council to conduct its own scoring and assessment for Council discussion at said meeting.*

#### **34. COYOTE VALLEY SPECIFIC PLAN**

Contract Planner Bischoff presented the staff report, indicating that several activities have taken place since the Council last heard this item. He updated the Council on the status of the development of the Coyote Valley Specific Plan by the City of San Jose. He stated that a community workshop was held on June 12, a task force meeting was held on June 14, and Mayor Kennedy, along with representatives from other South County agencies, had the opportunity to meet with Mayor Gonzalez. He indicated that a follow up meeting is planned with South County agencies on June 23 and that a technical advisory committee meeting is to be held next week.

Mayor Kennedy indicated that a group of representatives from South County agencies took the consensus report from the last summit workshop where various representatives from South County entities were in attendance. The group of representatives had a good meeting with Mayor Gonzalez. He

said that each presented respective issues. With respect to Morgan Hill, the items discussed were: 1) traffic congestions, especially if the jobs were to be built first as it would create a tremendous load on transportation systems; and 2) impact/demand for housing in Morgan Hill, especially if the industrial portion is built first. Morgan Hill Unified School District Board Member George Panos spoke about the need to identify school sites of adequate size to meet school needs. A question was asked whether it made sense to split Coyote Valley off from the School District. Board Member Panos responded that the City School Board is still evaluating this issue. He said that it is his understanding that this decision has not made. Gavilan College President Steve Kinsella talked about the fact that the college bond has been approved and that there is a need for additional community school facilities in Coyote Valley. Gilroy City Council Member Paul Correa confirmed the same issues that the City of Morgan Hill has. He indicated that Mayor Gonzalez agreed to take these concerns forward to the task force as well as to continue to meet with the group in order to maintain the dialogue and communication that has been established. He informed the Council that he attended the Task Force meeting, along with Mr. Bischoff, and presented the same items of concerns at the task force meeting as much he could within the 2 minute timeframe that they allow. He said that it was clear that the Task Force wants to complete their mission, regardless of how quickly and haphazardly it is done. He stated that several of the Task Force members also complained about inadequate dialogue and communication between each other.

Mr. Bischoff addressed the status of the Coyote Valley Specific Plan and what took place at the community workshop held on June 12. He said that 3 issues were discussed: 1) the location of creeks and infrastructures through the area; 2) desirable densities/land uses within the area; and 3) density. He addressed the basics of the plan, indicating that all alternatives reviewed include three interchanges with Highway 101: 1) Coyote Creek; 2) Bailey; and 3) north of Bailey. All of the plans show five connections with Monterey Road. He said to the extent that more people can use Monterey Road and Highway 101, the fewer people would try to traverse through local city streets. He addressed the land use assumptions that were included in all scenarios. He stated that there will be some level of mixed use development. There will be no basic industry or warehouses. What is being proposed is office and R&D uses as low as 2 stories and as high as 20 story building(s). Residential density development would be as low as 10 units per acre and as high as 100 units per acre on buildings as high as 20 or more stories. Being discussed is the creation of distinct neighborhoods (e.g., 10 neighborhoods) and the establishment of a downtown/community core near the intersection of Bailey and Santa Teresa Boulevard. He stated that at a prior workshop there was discussion about a focal point such as a lake. There was also discussion about the type of street system to be installed. He said that there was a general agreement that there should be a parkway system, indicating that this has been included in all alternatives. He stated that it is assumed that there will be a light rail system that will serve Coyote Valley. He indicated that there were three transit compositions discussed. He stated that everyone seemed to be supportive of bringing Fischer Creek down to its original location, adjacent to the foothill. They like the idea of a looping circulation system and that there was not much preference for where the parkway system should be. He said that it is being proposed that the highest residential density should be sited along the core area with a variety of building heights. Lesser density and lower building heights are being proposed away from the core. They would like to protect existing neighborhoods from high rises. Also, proposed is a gateway, off of Bailey, into the core area and transitioned density into the greenbelt.



Mr. Bischoff informed the Council that the City of San Jose now plans to come up with three specific land use alternatives over the next two months. What they will bring to the next workshop and Task Force meeting will be plans as well as the analysis of potential impacts. He said that the City of Morgan Hill has expressed concern about traffic impacts. It was stated that they would evaluate traffic impacts of all three alternatives to a certain extent. An issue that came out of the Task Force meeting was the greenbelt area. He stated that residents of the greenbelt areas have attended meetings and expressed concern about what the greenbelt means to them. There is concern that they would be the “have nots.” At the meeting, City of San Jose staff indicated that they would be ramping up their evaluation of the southern area and will be looking at options for adding value to properties in this area (e.g., transferring of development rights from one portion of the valley to another, the potential to allow further subdivision of this area). The City is hoping to come to some conclusion by September. He stated that the Open Space Authority is also weighing in on this and have indicated their interest in trying to create a vision or identify what they believe would be acceptable land uses for this area. He indicated that the Open Space Authority will be holding a meeting on June 28 to begin their discussion. He informed the Council that another meeting of the South County agencies will be held on Wednesday, June 23 at 4:00 p.m.

Council Member Tate indicated that there are other concerns that deal with timing and other issues that could have a tremendous impact on Morgan Hill.

Mayor Pro Tempore Sellers inquired whether there was discussion about altering the job/housing balance (e.g., will the City of San Jose proceed with the siting of jobs before building housing)?

Mayor Kennedy said that in his conversation with Mayor Gonzalez, he stated that the City of San Jose is looking/leaning toward phasing and constructing jobs and housing at the same time.

Mr. Bischoff indicated that the 50,000 jobs and 25,000 housing units were numbers that were developed almost 20 years ago. Although they may have appeared to be good numbers, they were not based upon a detailed analysis of the carrying capacity of the area. He indicated that the task force is not analyzing these numbers. He stated that he asked the San Jose planner responsible for this project what would happen if it was found that the numbers are not doable. It may be found that in order to put these many individuals and jobs in this area, the City will end up with buildings so tall that they are not economically feasible. He inquired whether there was a potential to revisit this issue with their City Council. Their response was that they would have see how the alternatives come out and that it may be a possibility that their City Council may revisit the issue. He said that the City of San Jose is struggling with the ancillary/support uses needed for this area (e.g., a need of a 100 acre college campus by Gavilan College, minimum sizes needed for an elementary schools, neighborhood parks).

Mayor Kennedy recommended that if there are additional comments that they be brought to the June 23 meeting.

Mayor Pro Tempore Sellers indicated that he would not be in attendance at June 23 meeting. He felt that it was imperative that the Morgan Hill City Council impress upon the City of San Jose that it is prepared to do whatever it takes to have these concerns addressed.

Council Member Tate said that the Council is bound to identify where money will be taking from when additional funds are added to the budget. He noted that the Council is not doing so in this case.

Mayor Kennedy opened the floor to public comment.

Joe Mueller felt that Mr. Bischoff hit the high points. He noted that the greenbelt area is the most heavily parcelized of any of the three areas. The comment from the Open Space Authority representative on the Task Force was alarming. They basically stated that they are more interested in the hills than they are the flat lines and that they were open to negotiations. He said that if you look at the Open Space charter, you will find that heavily parcelized land is not a priority to them because it is too difficult/expensive to obtain. He said that this is alarming considering the amount of effort the City is putting in to the urban limit line discussions and the assumptions that this group is making about what San Jose is to do with Coyote Valley.

No further comments were offered.

**Action:**        *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Appropriated** \$15,000 From the Current Unappropriated General Fund Balance.*

## ***City Council and Redevelopment Agency Action***

### **OTHER BUSINESS:**

#### **35.     ADOPTION OF FISCAL YEAR 2004-2005 BUDGET – Resolution Nos. 5814 and MHRA-251**

Director of Finance Dilles presented the staff report. He indicated that staff will be bringing back the corrections to the South County Regional Wastewater Authority budget next week for Council review and approval.

Mayor/Chairman Kennedy opened the public comment. No comments were offered.

Mayor/Chairman Kennedy stated that the Council will be approving a budget that was the result of a lot of hard work on the part of staff and Council budget workshops held earlier. He complimented staff for putting together an excellent budget and process.

### **Acting as City Council:**

**Action:**        *On a motion by Council Member Chang and seconded by Council Member Tate, the City Council unanimously (5-0) **Approved** the Resolution No. 5814 of the City of Morgan Hill Adopting the Fiscal Year 2004-2005 Annual City Budget and Adopting Appropriations Limit for Fiscal Year 2004-2005.*

**Acting as Redevelopment Agency Board:**

**Action:**        *On a motion by Agency Member Chang and seconded by Agency Member Tate, the Agency Board unanimously (5-0) **Approved** Resolution No. MHRA-251 of the Redevelopment Agency of the City of Morgan Hill Adopting the Fiscal Year 2004-2005 Annual Agency Budget.*

**Acting as City Council and Redevelopment Agency Board:**

**Action:**        *On a motion by Council/Agency Member Chang and seconded by Council/Agency Member Tate, the City Council/Agency Board unanimously (5-0) **Approved** the Capital Improvement Plan.*

**CLOSED SESSIONS:**

Mayor/Chairman Kennedy announced that the Council/Redevelopment Agency would reconvene closed session to discuss the below continued closed session item(s).

**1.**

**CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

Authority:	Government Code Sections 54956.9(b) & (c)
Number of Potential Cases:	4

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

**RECONVENE TO CLOSED SESSION**

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 10:40 p.m.

**RECONVENE**

Mayor/Chairman Kennedy reconvened the meeting at 12:09 p.m.

**CLOSED SESSION ANNOUNCEMENT**

Mayor/Chairman Kennedy announced that no reportable action was taken in closed session.

**FUTURE COUNCIL-INITIATED AGENDA ITEMS**

No items were identified.

**ADJOURNMENT**

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 12:10 p.m.

**MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, CITY CLERK/AGENCY SECRETARY**

**CITY OF MORGAN HILL  
JOINT REGULAR REDEVELOPMENT  
AND SPECIAL CITY COUNCIL MEETING  
MINUTES – JUNE 23, 2004**

**CALL TO ORDER**

Chairman/Mayor Kennedy called the special meeting to order at 7:05 P.M.

**ROLL CALL ATTENDANCE**

Present: Agency/Council Members Carr, Chang, Tate and Chairman/Mayor Kennedy  
Absent: Agency/Council Member Sellers

**DECLARATION OF POSTING OF AGENDA**

Deputy Agency Secretary/Deputy City Clerk Malone certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

**SILENT INVOCATION**

**PLEDGE OF ALLEGIANCE**

Chairman/Mayor Kennedy led the Pledge of Allegiance.

**RECOGNITIONS**

Mayor Kennedy presented a Certificate of Recognition to Kelsey Hendricksen, a 6 year old Morgan Hill girl who successfully called 911 to summon rescue personnel to save her father's life.

**CITY COUNCIL SUB-COMMITTEE REPORT**

None.

**CITY MANAGER REPORT**

City Manager Tewes stated there was no report this evening.

**CITY ATTORNEY REPORT**

City Attorney Leichter stated there was no report this evening.

**OTHER REPORTS**

None.

## **PUBLIC COMMENT**

Council Member Tate asked the public to join in the 4<sup>th</sup> of July festivities being planned by Independence Day Inc. for Morgan Hill. He asked anyone who is interested in being a volunteer to contact Jennifer at IDI and offer their help, stating that there is a need for more volunteers to make the Morgan Hill 4<sup>th</sup> of July celebration another great success this year.

Mayor Kennedy reported that he had learned from Bob Hunt, who works with the organization of the parade, that Morgan Hill has now surpassed Redwood City in having the largest number of parade entries in the Bay Area. The Mayor stated he is very proud of this parade, and encouraged all citizens to support it and make it a success once again.

Chairman/Mayor Kennedy opened the floor to public comments for items not appearing on this evening's agenda. No comments were offered, and the public comment was closed.

## ***Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:**        *On a motion by Agency Member Tate and seconded by Agency Member Carr, the Agency Board unanimously (4-0, with Sellers absent) **Approved** Consent Calendar Items 1-3, as follows:*

1.        **MAY 2004 FINANCE & INVESTMENT REPORT.**

**Action:** **Accepted** and **Filed** Report.

2.        **APPROVAL OF 2004-2005 SOUTH COUNTY REGIONAL WASTEWATER AUTHORITY (SCRWA) BUDGET.**

**Action:** 1) **Approved** the 2004-2005 SCRWA Budget; and 2) **Adjusted** the Adopted 2004-2005 City of Morgan Hill Sewer Operations and Sewer Impact Budgets as Detailed in Exhibits A and B.

3.        **CONSULTANT AGREEMENT WITH BENCHMARK.**

**Action:** **Authorized** the Executive Director to Execute a Consultant Services Agreement with Benchmark for Fiscal Year 2004-2005 in an Amount not to exceed \$402,500 to Provide Project Management Services and Lead Testing for Housing Improvement Programs, Subject to Review and Approval by City Attorney.

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## ***Redevelopment Agency and City Council Action***

### **CONSENT CALENDAR:**

**Action:**        *On a motion by Agency/Council Member Tate and seconded by Agency/Council Member Carr, the Agency Board/City Council unanimously (4-0, with Sellers absent) Approved Consent Calendar Item 4, as follows:*

4.        **AGREEMENT FOR OUTSIDE LEGAL COUNSEL (RICHARDS, WATSON & GERSHON).**

**Action:** *Authorized the Executive Director to Execute Consultant Agreement for Legal Services in FY 2004-2005 with Richards, Watson, and Gershon in the Amount of \$54,000, Subject to Review and Approval by City Attorney.*

## ***City Council Action***

### **CONSENT CALENDAR:**

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (4-0, with Sellers absent) Approved Consent Calendar Items 5-9, as follows:*

5.        **RESOLUTION SUPPORTING GRANT FUNDING FOR A COYOTE CREEK TRAIL CONNECTION PROJECT. Resolution No. 5815**

**Action:** *Adopted Resolution Supporting a Coyote Creek Trail Connection Project as the City's 2004-2005 Transportation Fund for Clean Air Regional Fund Project Candidate.*

6.        **FINAL MAP APPROVAL FOR SAN PEDRO VILLAS (TRACT 9587).**

**Action:** *1) Approved the Final Map, Including the Abandonment of an Excess Portion of Cory Drive; 2) Approved the Subdivision Agreement and Improvement Plans; 3) Authorized the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and 4) Authorized the Recordation of the Map and the Subdivision Improvement Agreement Following Recordation of the Development Improvement Agreement.*

7.        **REJECT BIDS FOR SIDEWALK CONSTRUCTION ON THE NORTH SIDE OF EDMUNDSON, WEST OF MONTEREY ROAD.**

**Action:** *Rejected Bids Received on May 19, 2004 for the Sidewalk Addition on Edmundson West of Monterey Road and Authorized Staff to Rebid the Project.*

8.        **APPROVED SPECIAL CITY COUNCIL MEETING MINUTES OF JUNE 9, 2004.**

9.        **APPROVED SPECIAL CITY COUNCIL MEETING MINUTES OF JUNE 11, 2004.**

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## ***Redevelopment Agency and City Council Action***

### **CONSENT CALENDAR:**

**Action:** *Because Agency/Council Member Sellers was absent from the meeting, and due to a potential conflict of interest issue on Item #10 for himself and Agency/Council Member Chang, Chairman/Mayor Kennedy **invoked the Rule of Necessity**. A coin was flipped, and Mayor Kennedy was selected to recuse himself from the vote on this item. He left the Council Chambers during the vote on Item #10.*

**Action:** *On a motion by Agency/Council Member Tate and seconded by Agency/Council Member Chang, the Agency Board/City Council unanimously (3-0, with Sellers and Kennedy absent) **Approved** Consent Calendar Item 10, as follows:*

#### **10. AWARD OF CONTRACT FOR 2003-2004 PAVEMENT RESURFACING PROJECT.**

##### **Action:**

**Acting as Redevelopment Agency:** *Resolution No. MHRA-252*

1. **Adopted** *Resolution Approving Payment by the Agency for All or Part of the Cost of Certain Street Improvements Which Benefit the Ojo De Agua Community Development Project.*

**Acting as City Council:** *Resolution No. 5816*

2. **Adopted** *Resolution Approving Payment by the Morgan Hill Redevelopment Agency for All or Part of the Cost of Certain Street Improvements which Benefit the Ojo De Agua Community Development Project.*
3. **Appropriated** *\$125,000 From Current Year Unappropriated Street Fund Balance (202) for this Project.*
4. **Awarded** *Contract to Silicon Valley Paving, Inc. in the Amount of \$557,205.10 for Construction of the 2003-2004 Street Resurfacing and Reconstruction Project, Subject to Review and Approval by City Attorney; and*
5. **Authorized** *a \$55,720.00 (10%) Construction Contingency.*

## ***City Council Action***

### **PUBLIC HEARINGS:**

#### **11. ORDINANCE AMENDING SECTIONS OF THE MUNICIPAL CODE REGARDING PURCHASING. *Ordinance No. 1684, New Series***

*This item was heard out of order, after items 13 and 14, because the public hearing portion of the meeting had to wait until 7:30 P.M. to in order to conform to the public hearing notice. The public hearing on this item was begun at 7:35 P.M.*

Assistant to the City Manager Dile presented the staff report as provided in the agenda packet.



Chairman/Mayor Kennedy opened the public hearing.

No comments being offered, the public hearing was closed.

No discussion by City Council.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council unanimously (4-0, with Sellers absent) **Waived** the reading in full of the Ordinance amending sections of the Municipal Code regarding purchasing.*

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council **Introduced** the Ordinance amending sections of the Municipal Code, by title only, as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 3.04 (PURCHASING) OF TITLE 3 (REVENUE AND FINANCE) AND DELETING SECTIONS 3.04.320, 3.04.330, 3.04.340, 3.04.350, 3.04.360, AND 3.04.410 OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING LOCAL PREFERENCE, THRESHOLD AMOUNTS FOR BID, RECYCLED PRODUCTS, EMERGENCY EXEMPTIONS, AND DONATION OF UNUSABLE MATERIAL, by the following roll call vote: AYES: Carr, Chang, Kennedy, Tate; NOES: None; ABSTAIN: None; ABSENT: Sellers. Ordinance No. 1684, N.S.*

## ***City Council Action***

### **OTHER BUSINESS:**

#### **12.    REPORT OF THE COUNCIL SUBCOMMITTEE ON THE LIBRARY PROJECT SELECTION**

City Manager Tewes presented the Report of the Library Subcommittee on the Library Project Selection as provided in an agenda packet supplement. He stated that he had prepared this report on behalf of the Subcommittee Members Kennedy and Tate based on the discussions and recommendations of the Subcommittee, but that they had not had an opportunity to review the final report prior to distribution.

He stated the four recommendations listed under the Subcommittee Report's Implementation Plan for consideration by the City Council this evening are:

1. **Recommend** the City Manager prepare the appropriate analysis and findings for the Council to consider an increase in the Library Development Impact Fee.

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2. **Recommend** that the City Manager analyze the alternative project management model and prepare recommendations for the Council to consider on how to obtain the services of a qualified construction management firm and architect.
  3. **Recommend** that the City Manager initiate discussions with the property owner of the downtown site leading to a future Owner Participation Agreement or other appropriate agreements. Those discussions should include:
    - Environmental review
    - Preparation of an overall master plan for the Sunsweet property
    - Preparation of a parking plan including “offsite” opportunities
    - Design review of all the elements of the master plan
    - Establishment of the “library parcel” and the possible use of adjacent RDA land
    - A schedule for construction of the library, the retail/office, and housing components
    - Business terms for a ground lease and for use of the adjacent RDA land
    - Consideration of the appropriate amendments to the Downtown Master Plan to accommodate the Downtown Library Project.
  4. **Recommend** that the City Manager report back on the progress on those discussions no later than October 27, 2004, by which time it will be known whether the larger library project at the Civic Center will have received State funding.

Mr. Tewes stated that the Subcommittee studied all proposed sites and decided that the most viable possibilities were the Civic Center site and the Sunsweet site. He stated that it is difficult to compare the two sites on an equal basis because of the greater amount of attention and preparation work that has already been done on the Civic Center site during the grant application process, but the report provides the Council with a viable comparison of the two sites with the information that is currently available. After much deliberation, including the due consideration of community and Library Commission input on the preference for the Civic Center site, the proposal being recommended by the Subcommittee for Council approval is the downtown Sunsweet property site. The Subcommittee came to the conclusion that the negative issues raised regarding the downtown site could be mitigated with careful planning and budgeting of funds. Further details supporting their recommendation and the next steps that need to be taken are contained in the Subcommittee’s report.

Mayor Kennedy thanked Council Member Tate, City Manager Tewes and the members of the Library Subcommittee for all the hard work that has gone into finding a way to build a new library in Morgan Hill. He stated that the good news is we have found a way to build a new library in spite of not receiving state grant funds. He also stated he is recommending the Council take no action this evening in order to allow the absent Council Member Sellers an opportunity to participate in the decision on this matter. Delaying the vote will also give all Council members time to digest the information provided by the Subcommittee, receive community input, and get answers to any questions they may have before they are asked to make a final decision on the site selection.

Council Member Tate stated that as a member of the Library Subcommittee, he is very interested in hearing from the public this evening, and would like to make his full comments after that has occurred. He stated his reluctance to put off the vote because at the Council's retreat the stated policy was that a goal for this project would be adopted by July 1; and he was refused when he requested an extension on this deadline. He does not expect the Council to hold off on decisions when he is absent, and is ready to move forward tonight with a decision in order to meet the goal deadline set by Council.

He further stated that he wanted to clarify some items in the current library plan recommended by the Subcommittee:

- The facility has been reduced in size from 30,000 sq. ft. to 28,000 sq. ft.
- There will be no community room.
- The supposition, based on the best information he has available, is that we will not receive grant funding in the third round application currently under consideration by the State, and to be decided in October.
- We currently only have preliminary information on the downtown site, but the challenges of this site can be overcome with proper planning.
- Downtown is more centrally located for all the students in the community.
- The Community and Cultural Center's (CCC) location in this neighborhood has demonstrated that the safety issues raised have not been a problem, and that the increased activity of adding the library to the area will lend itself to an even higher level of safety in the neighborhood.
- Extra funding will be allotted towards solutions for the issues of traffic circulation and parking that will benefit the entire downtown.
- He is confident that the award winning County library staff will be able to come up with a creative solution to the issue of a 2-story building requiring additional staffing.
- The diversion of \$7 million from the flood control is reasonable because, based on his many years of experience with the water district, they consistently have stated that the PL566 project will be completed at least "10 years from now", and have always maintained that 10 year horizon. This money is currently just sitting and waiting for their completion of PL566, and could be put to a much better use right now in providing the community with a much needed new library facility.

Mayor Kennedy opened the public comment. He noted that he had a very large number of speaker cards, and requested that speakers with duplicate comments consider limiting their remarks to a statement of reinforcement of previous comments already made.

Citizens' comments are summarized as follows:

Mr. Brad Jones:

- His home is centrally located between both sites, so feels he has no prejudice in that regard.
- Council needs to get as much value for the dollar as possible.
- Downtown site is more central, more visible, and closer to the Community and Cultural Center where meetings can be easily booked in conjunction with the Library use. Also close to the train station for access.

- Objects to placing an increase of 2 to 3 times the traffic on the streets of the civic center site.
- Wants the library open more than it is now.
- As a downtown business owner, feels downtown is the most logical place for the library, even though he is not sure what kind of an impact it will have on his bookstore business.

Mr. Bob Martin:

- Spoke as a member of the Economic Development Subcommittee, and stated that the EDC would like to see a study done of which location would most enhance the local economy and increase of tax revenues.
- In other cities where such a facility has been located downtown the results have clearly been a very positive impact on the local community.
- Libraries serve as a catalyst to spur the economy where they are located, and increase the growth and development of neighborhoods around the libraries; and he cited Chicago and Mt. View as examples.
- The EDC position is that a vital downtown is critical to the health of downtown Morgan Hill.

Mr. George Nale:

- Spoke as a member of the Library Commission, stating that their top priority is to get the library built, and now is the time to accomplish that because money is available and the current City Council is in favor of moving forward on the project.
- If Sunsweet site is chosen, so be it, but the principal consideration of the Library Commission was location and, after much review, they recommended the Civic Center location.
- The Library Commission felt there were too many “ifs” associated with locating somewhere else.
- The current, and previous, surveys of the community have all shown substantial support for the Civic Center site.
- The downtown site might be good for business, but literacy is what really matters in this instance.
- School children need to be able to access the library without having to cross in heavy traffic areas.
- No other site has as safe or easy access as the Civic Center site.
- Civic Center site has public support and acceptance, and an operational efficiency in its design.

Rocke Garcia:

Mr. Garcia thanked the Council for their consideration of the Sunsweet property, and introduced a team which has been assembled to provide information on their concept for the Sunsweet site library project: Blair Barry of Barry & Volkmann Architects; Mark Schatz of Field Park Architects; Bill McClintock of MH Engineering; Greg Ing, landscape architect; and Chuck Toeniskoetter.

He cited 7 reasons to build the library at the downtown site:

- People – more citizens will benefit from the downtown location.
- Money – An innovative public/private partnership will get the library built at a lower cost.
- Speed – a streamlined design/construction process will enable citizens to enjoy the library sooner.
- Location – a safe, geologically sound, central location near mass transit with more than adequate parking will attract more users.

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- Business Friendly – A downtown location is good for business, will attract more businesses, and generate more tax revenues.
  - World Class Design/Local Development – The combined skills of a world class library architect and local developer will result in a premier two-story facility that meets local needs.
  - Civic Pride – The reality of a first class library at the Sunsweet site will continue a tradition of centrally located services; and, combined with the Community and Cultural Center and Playhouse, will generate massive civic pride.

Mr. Blair Barry:

- The Library on Depot will engage both Depot Street and 3<sup>rd</sup> Street, and this mixed use will draw pedestrian traffic off Monterey to walk through the retail uses on their way to the Library.
- The 30 foot promenade will provide a good gathering place for pedestrians to enjoy the shaded walk and the benches.
- Allows the closure of 3<sup>rd</sup> Street for street fairs and the Farmer's Market, as well as other community events.
- Provides parking for approximately 80 cars in the center and 85 cars necklaced around site.
- Provides 40 residential units off of 4<sup>th</sup> Street, bringing new residents to engage in and bring activity to the site.
- High visibility and dynamic design on the corner of Depot and 3<sup>rd</sup> Street.
- Courtyard at rear of library provides additional uses for now and space for expansion in the future.

Mark Schatz:

- The plans have been changed in response to comments they had received, and to make it more of a part of the Downtown Plan.
- Has worked on library projects for 14 years, and built over 20 libraries. His experience is that the library has proven to be a viable anchor tenant that brings life and vitality to the area.
- The downtown site has synergy with the CCC and the train depot.
- This is only a first draft of the proposed design. Can increase self-service of patrons to address circulation issues and eliminate the need for a 2<sup>nd</sup> floor librarian.

Chuck Toeniskoetter:

- Explained the concept of “multiple prime” type of construction, which allows the incorporation of builder information in the design process to keep the project on schedule and under budget when construction begins. This technique is very popular with public agencies. He has done 65 to 70 projects of this type, completing them on schedule and under budget. He is pleased that Morgan Hill is considering this approach to the Library construction project.
- He believes that a downtown library would be in accord with the plans for cultural development of Morgan Hill that this Council has been working toward.
- The Library in downtown San Jose has spurred a great deal of downtown activity, and he believes the same would happen in Morgan Hill.

Cindy Webenbauer:

- Her family has lived in Morgan Hill for 30 years, and she plans to stay. She has been hearing a lot said about the economy, but not very much about what the residents of the community want.
- Stated that as a parent of young children, she does not want the library moved downtown, but likes it where it is.
- Does not feel the economy of Morgan Hill should be the issue considered in this matter, and asked the Council not to sacrifice the community's desires in order to bolster the economy of Morgan Hill.

Nancie Barker:

- The unique geography of Morgan Hill must be considered - on the east side of we have railroad track, and on the west side we have a large hill. It is already difficult to park in the downtown area, and the new restaurant moving into the old Police Department building will be adding to this problem.
- When she goes to the library, she is not going to mix this trip with other errands. Don't sacrifice the library for the economy.
- The library fills a great need for those who cannot afford to purchase books or computers.
- Concerned about the leasing of the land and the large balloon payment due at the end of the lease.
- Concerned about the possibility of future expansion.
- The Farmer's Market already takes a lot of parking in the area, and adding the library would be a detriment.

Marc Minkus:

- Employee at Hospira Inc. (formerly Abbot Labs). Abbott had a corporate library, but that is no longer in existence, so he envisions that his company's employees will need to make use of the public library system. The downtown site would be much more convenient for them as a business entity.
- As a resident of Morgan Hill, who moved from a suburb of Chicago, he stated that libraries there are always in the business areas, and close to the train stations. This has proven to be very convenient.

Chuck Dillmann:

- Spoke as a resident and not as a member of the Library Commission.
- Reported that there is another bill that has been introduced as a successor to Proposition 14 in order to give those who do not receive Prop. 14 funding an opportunity to apply for another grant.
- The reduced size of the proposed library will disqualify us for grant funding.
- The larger sized library had been determined to be the size needed to meet the needs of the future population.
- The rush to get this accomplished in 6 months has forced the choice down to these two selections. While it may be best to place it in downtown, this site may not be the best place in downtown; and other downtown areas, such as south of Dunne, should also be considered.

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- Site should be chosen to cure blight, and the areas across from the CCC could use blight improvement much more than the Sunsweet site.
  - The library was previously part of the integrated plan of the civic center and that issue needs to be settled before the final decision is made on the location of the library.

Andrew Poth:

- Morgan Hill resident since 1967, and feels the Sunsweet location is a lousy choice for the library because of the railroad tracks being so close. The noise would be a great distraction to those who come to the library.
- The location is also very congested and parking would be a big problem.
- Supported what earlier speakers have said about when they go to the library they are not interested in going to other businesses.
- The final decision on the location should be put before the voters.

Rosy Bergin:

- Change is difficult, and it is easier to maintain the status quo, but the downtown site is an opportunity to provide greater good for the same dollar amount.
- Makes the library accessible to more schools.
- Parking is already available at the train depot, the Grange, and the CCC; and the additional 120 spaces will provide additional downtown parking.
- This is an efficient use of the land.
- Mass transit will reduce the need to drive cars into the area.
- Will bring more shopping opportunities and provide housing to those who want to live downtown.
- Will eliminate the current blighted neighborhood.
- Increased activity will eliminate crime.

Dan Craig:

- Speaking on behalf of the Morgan Hill Downtown Association (MHDA), which fully supports this mixed use of the Sunsweet site; and agrees with the Council Subcommittee's statement that the project should be a part of the Downtown Plan because it will be good for both the downtown and the library.
- Compromises need to be worked out, but why not put it where it will bring economic development and benefit.
- The downtown is starting to improve, and there are new property owners being drawn there, because of the investments the City has made into the downtown area,
- Competition is not standing still (i.e., Coyote Valley development, Gilroy's development), and this project could jumpstart growth and be a catalyst to draw people downtown.
- The library would be a great accompaniment to the CCC and the coming courthouse.
- Strongly urged the Council to support the Sunsweet site.

Stacy Marr:

- Urged the placement of the library downtown. It incorporates many of the goals of the city, such as housing, foot traffic and growth.

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- Implored all citizens to look at this with a long-term vision. As the downtown goes, so goes the rest of the city; so we all have a vested interest in a thriving downtown.
  - Make the downtown a true “hub” of the city. With all the improvements and functions going on downtown, this proposal makes the most sense.
  - Main library branches are always located in the downtown areas.
  - Urged the Council to cement the heart of the city and give a centerpiece that would go hand and hand with the CCC.
  - Change is difficult and scary, but implored the Council to adopt the long term vision that this is not just an economic decision, but will make us a world class city.

Gary Walton:

- Agreed with the Subcommittee Report and the comments made by Council Member Tate.
- This is an opportunity for the city to get into a modern design for the downtown area.
- This could be an award winning project, and we need to keep up with the future.
- Suggested that CalTrans may be a source of funding to provide for additional parking areas in the downtown.
- Reminded that there were a lot of people against the saving and renovation of the Morgan Hill Elementary School, but now people are very supportive of it. If this is done right, he thinks this will be the same way and the community will be supportive.

Jerry DiSalvo:

- Reiterated all that has been said in favor of the downtown location, stating that it is not an “either-or” situation. Those who have said that they would only go the library and not elsewhere can still go to the library; but those who want to go to the library and also enjoy the downtown will be given that opportunity.

Marby Lee:

- Reiterated what others have said against the downtown site.
- Concerned about the traffic and parking, which is already very bad during the Farmer’s Market. Has seen a lot of cars that circle the area looking for a closer parking spot, and that is a concern with children walking in the area.
- Stated that her biggest frustration is feeling that the Council listens to the business interests but does not listen to the voice of parents and residents.
- Frustrated that the survey of citizens showed they wanted it at the civic center; and feels that the desires of the community members are continually disregarded in decision making processes.

Marlene Amerian:

- Favors downtown site.
- Wants to see Morgan Hill developed as a cultural hub.
- Feels the Sunsweet site is an opportunity to bring a sense of history and identity to Morgan Hill. This is an historical location where in 1850 there was a Farmer’s Union; and the Sunsweet property is where our agricultural history began. This is a history that most people are not aware of, and this provides an opportunity to bring this information to the citizens.
- Proposed designing the entry gates as a means to convey some of this historical information.



Charles Cameron:

- He stated he has no economic interest in this matter, but is only interested as a frequent user of the library.
- Feels that Mr. Garcia has done a good job in promoting his site, and the basic attraction of this site is the synergism with downtown. But, when he goes to the library, the downtown is not part of his plans; and when going downtown, the library is not part of his plans. The two don't mix.
- Operational costs for a two-story library will be higher.
- Additional parking creates additional costs to the city.
- The Library Commission and the polls recommended the civic center site, and he feels strongly that this is the safest site for people walking, driving, or biking to the library.

Mayor Kennedy closed the public hearing at 9:00 P.M. after the last speaker.

Council Member Tate stated he wanted to first address the fact the public poll indicated a preference of two to one for the civic center site. He wanted to be clear that it would be very easy for him to go out and poll the public on every issue and do exactly what they tell him to do; and he was elected to represent the people the way they want to be represented. He has struggled with that on this issue, and had come to the conclusion that to be true to himself and those he represents, he need to do what he believes is best for the city. If the decision is made to build the library at the civic center site, he would be totally fine with that because it will work here and do what it has done for years here, it will be expanded and he will totally support such a decision if that is the way the Council decides to vote.

His reasons for choosing the downtown site are based on what will get people to use the library, and instead of looking at who is going to go downtown to use something else, he is looking at who is downtown that is going to use the library. According to all he has heard, the best place to put the library to get it used is to put it in a mainstream location such as downtown because that gets more users into the library. This allows the library to do what it is intended to do, which is to serve the greatest number of people.

He referred to the General Plan statement regarding maintaining the small town atmosphere of Morgan Hill. His desire is to maintain the quality of life and small town atmosphere that everyone loves about Morgan Hill, but does not feel that is preserved by keeping everything exactly the same. Growth will occur and changes have come and will continue to come; and in order to preserve that sense of community that gives Morgan Hill its special flavor he feels that we need to focus on the downtown as the way to make that happen. The more functions that can be put downtown, while overcoming all the problematic issues such as parking, the more we enhance our sense of community.

He stated that the Downtown Plan begins with the comment that the downtown should be strengthened as the social and activity heart of Morgan Hill. The growth that is occurring in the downtown so far is all moving toward this goal of enhancing the gathering and social nature of downtown and making it the "heart" of the city. In contrast, when he considers the library, he sees it, not as a place for social activity, but as a place for quiet contemplation and more individual quiet time, which is more like the "soul" of the city. Enhancing both the heart and the soul of the city seems very synergistic to him.

Though not quantifiable, they are reasons that he is unable to escape from. The choice of a mainstream site such as this that enhances its use as a library, complements the General Plan to preserve our small town atmosphere, and enhances the Downtown Plan at the same time goes a long way with him. In addition, it is truly a redevelopment project in the downtown, while building it at the civic center would not be addressing a blighted area. The Sunsweet site really ties together several areas of the downtown that are currently being developed. Downtown is a good place for the library because it's the place where the library will get the most beneficial use from our patrons.

Council Member Chang noted that the downtown site provides an additional 120 parking spaces, and wanted to know how many spaces are provided in the civic center plan.

City Manager Tewes responded that the plan shows a number of parking spaces in the high 80's with expansion to 120. He noted that is not the issue before the Council for a decision this evening, and that Council is not being asked to adopt this plan or even this development team. There is still a great deal of coordination that needs to be done. The parking issue will be specifically addressed during the future planning. The Subcommittee Report simply indicates that there is money available to fix the problem, and the details of that will need to be worked out.

Council Member Carr noted that his interpretation of the Subcommittee's recommendation is not to simply build the library on the Sunsweet site, but here is the location and now let's think about master planning that site and addressing some of these issues that are being brought forward. And as part of the recommendation, funding ideas are presented on how to do the planning on that site.

Mayor Kennedy and Council Member Tate concurred that they were saying here is the money, now let's go and solve the downtown parking problem, not just for the library but for the entire downtown; and they are able to do that without taking away from the \$3 million set aside for downtown projects.

Council Member Carr asked for clarification on whether the increase to the library impact fee would be on new development only, and whether there is currently an impact fee charged for development in the unincorporated areas that Morgan Hill serves.

City Manager Tewes responded that the library impact fee is only charged on new residential development. He also stated that there is not an existing impact fee charged for unincorporated areas; but fairness dictates that when development occurs in the unincorporated areas which impacts on the Morgan Hill library, then that development needs to pay for that usage impact.

Council Member Carr asked why the square footage was set at 28,000 square feet.

Council Member Tate responded that the Subcommittee felt that doubling the size of the current library to 28,000 square feet would provide adequate library service for some period of time.

Mayor Kennedy thanked everyone who spoke and provided input, stating that the Council is very appreciative that they took the time to provide well prepared and thoughtful presentations to the Council about this issue. One of the reasons this item is under consideration is that there was a lot of concern

expressed that the library project would not be done, and the Council wanted to make sure that the library project does proceed. With respect to Council action, he stated that though he would like to see a start made on the implementation plan in the Subcommittee report, because of the mention that was made of a new bill being introduced to provide additional library grant application opportunities to the losers of the 3<sup>rd</sup> round Prop 14 grant applicants, he is not sure the Council has all the information needed to make a decision this evening.

Council Member Tate responded in regard to the potential for additional state grant funding, that he has been told that this bill has been suspended, and is not likely to resurface for several years.

Mayor Kennedy noted that he has received word from the Library Authority staff that it is unlikely that Morgan Hill will be successful in the 3<sup>rd</sup> round of grant funding, and that is why the Subcommittee wanted to move forward on this proposal.

Council Member Tate concurred, stating that the results will be available in October, and if we are lucky enough to receive the grant funding, we could stop everything we are doing here and build the grant application facility on the civic center site; but it is unrealistic to think that this will happen.

Council Member Carr responded to the Mayor's earlier comment that we should wait until Council Member Sellers has an opportunity to participate in the decision on this matter, and though he appreciates that respect for his colleague, he is ready to move forward tonight. The Council had made a commitment to the community to make a decision in June on a site location and a funding plan; and though both of these still need more work, the way to get that work done is to make some decisions. He thanked the speakers and those who e-mailed, called, and wrote for their comments on this difficult decision before the Council. He also thanked the Subcommittee for their hard work and the great amount of time they invested in this issue to help the Council with the decision.

He continued, stating that this community has had a focus on life-long learning and literacy and has been demonstrated through a strong support of the library; and his hope that this excitement and support will continue as the Council makes their decision on this issue. He is a parent of two small children, who frequently walks to the library. He feels the downtown site is safe and wholeheartedly supports the downtown site, the recommendations of the Subcommittee, and the very articulate comments made earlier by Council Member Tate about that site. He stated that this is an opportunity for the Council to be bold and innovative with a decision tonight. All things being equal, why would we not want to implement other policy positions that we have as a Council. He is aware that all things are not exactly equal between the two sites, but he believes the functionality of the library can become equal.

He remarked that parking was something that everyone talked about, and in the report this is addressed in an innovative manner that would be beneficial to the entire downtown. Regarding the comment that the library is being sacrificed on behalf of the downtown economy, he assumes that these comments are referring to the safety of the library being sacrificed in the areas of traffic, pedestrian access and those types of issues. If those are issues for the library being located downtown, then they are issues that exist for downtown itself and those issues need to be addressed regardless of where the library is located. He

believes that the library helps to solve these problems, and that the suggested plan can be improved even further to address these issues making the area safer for everyone.

The location of the railroad tracks and noise from trains may still be an issue, but he does not feel that this is about safety because of improvements that have already been implemented by this Council.

He is very concerned and disappointed that there were comments made implying that the Council does not listen to the community voice. The five Council Members have to keep the entire city and community in mind, and not just one area of the city or one neighborhood. With that in mind, he feels that the downtown site, with proper master planning and improvements, will be the best direction for all of the community. There are still obviously lots of details to be worked out to make this work, but he is in favor of pursuing this in the same manner as the model being used with the restaurant at the old Police station building. He favors choosing an operator and giving them a window to allow exclusive negotiations to make sure that this is the right project for us, that all the issues are addressed and that the city wants to move forward. He feels that is implied in the recommendation before the Council with a date for that to come back, and he would support that recommendation tonight.

Council Member Chang stated that she clearly remembers that Council Member Sellers would like to have a chance to talk about this subject, and since this is a very important decision she feels that he should be given that opportunity. She likes the downtown site and feels that is it a good thing for the economic growth; but is uncomfortable with the fact that polls show that two-thirds of those who responded prefer the civic center site, and the Library Commission has also recommended that site. She stated that she would like to have some time to evaluate this. She is elected to listen to and serve the people the best she can; and though she personally feels that the downtown site is right, she needs time to think about it and wants to give Council Member Sellers a chance to provide his view; so, therefore, she will not be able to vote on this tonight.

Mayor Kennedy asked the City Manager if there is a way to start the process going so we don't lose time, but yet not take formal action on site selection until Council Member Sellers returns.

City Manager Tewes responded that the first and second recommended actions listed under the Implementation Plan portion of the Subcommittee Report are not site specific, and need to be done no matter which site is chosen. The analysis of the impact fees, the analysis of the alternative project management model, and provision of recommendations on how to obtain the services of a qualified construction management firm and architect could all proceed without a site being designated. The third and fourth recommended actions of the Implementation Plan are site specific, and there will need to be clear direction before proceeding with those items.

Mayor Kennedy suggested that the Council authorize the staff to proceed with the first and second actions listed under the Implementation Plan portion of the Subcommittee Report, and that the formal decision on actions three and four of the Implementation Plan be postponed until Council Member Sellers is present. This gives the Council time to discuss this issue further with the community members, receive continuing input and explain why the downtown site was recommended by the Subcommittee.

Council Member Tate asked if when this issue is brought back before the Council if there is some way to avoid having to repeat what has already been covered this evening.

Mayor Kennedy responded that the issue would again be open to public comment again, even if the first and second steps were approved this evening.

Council Member Carr requested that, if this item is continued, it not be placed on the agenda of July 7, due to the fact that the agenda for that date is already very full and the Council does not want to shortchange any of the issues on that agenda.

Mayor Kennedy made a motion that the Council proceed with the first and second Implementation Plan actions, and that the third and fourth Implementation Plan actions be brought back for consideration at the meeting of July 21, 2004. The motion was seconded by Council Member Chang.

Council Member Tate thanked Council Member Carr for his eloquent support of taking a vote tonight, and stated that he would support the Mayor's motion because he thinks it is important that the Council act to give staff direction on this matter. He stated he is disappointed that the Council is not sticking to the previously established schedule to which he was required to conform at an earlier date.

Council Member Carr stated he does not want to lose a month of time, and does not want to hold up the Implementation Plan schedule by pushing this process back further.

Council Member Chang stated that she feels she is hearing the majority of the Council has already made their decision on this matter, but wants to extend the courtesy to Council Member Sellers because he has requested the opportunity to be heard on this issue.

Council Member Tate stated that this implies that any Council Member who is going to be absent from any meeting can ask that a decision be postponed until they return, and he expressed his disagreement with this philosophy.

Mayor Kennedy expressed his discomfort in acting on this important decision without all Council Members being present.

Council Member Chang stated that she feels this is a courtesy that would be extended to any Council Member if they asked.

**Action:**        *On a motion by Mayor Kennedy and seconded by Council Member Chang, the City Council (3-1, with Carr voting NO, and Sellers absent) **Approved**, and **Directed** staff to proceed with, the Library Subcommittee Report's Implementation Plan's First action, "that the City Manager prepare the appropriate analysis and findings for the Council to consider an increase in the Library Development Impact Fee", and its Second action, "that the City Manager analyze the alternative project management model and prepare recommendations for the Council to consider on how to obtain the services of a qualified*

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construction management firm and architect”; and **Continued** any further Council action on the Library Subcommittee Report’s Implementation Plan’s Third and Fourth actions to the meeting of July 21, 2004.

**13. CALL GENERAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 2, 2004.**

This item was heard out of order at 7:15 P.M.

City Manager Tewes presented the staff report as provided in the agenda packet.

Mayor Kennedy asked for clarification as to whether this schedule requires that all documents for a ballot measure be ready for Council approval on July 21, 2004.

City Manager Tewes stated that the Council has already scheduled a discussion of revenue development on the agenda for July 7, 2004 meeting.

Council Member Carr commented that he supports the adoption of the calendar, but noted that the work is really going to be cut out for the Council to accomplish everything needed in the time allowed, and the time constraints will limit the amount of public input that can be gathered.

Mayor Kennedy opened the public comment.

No further comments being offered, the public comment was closed.

**Action:** *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council unanimously (4-0, with Sellers absent) **Adopted** the Resolution Calling for an Election to be Held on Tuesday, November 2, 2004 to Elect Mayor, Two City Council Members, City Clerk and City Treasurer. **Resolution No. 5817.***

**Action:** *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council unanimously (4-0, with Sellers absent) **Adopted** the Resolution Requesting the Services of the County of Santa Clara Registrar of Voters and the Consolidation of the Election. **Resolution No. 5818.***

**Action:** *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council unanimously (4-0, with Sellers absent) **Adopted** the November 2, 2004 Abbreviated Election Calendar.*

**14. CENTENNIAL PLANNING COMMITTEE.**

This item was heard out of order at 7:20 P.M.

Mayor Kennedy presented the staff report as provided in the agenda packet.



**4.**

**CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Authority:	Government Code section 54956.9(a)
Name of Case:	Hacienda Valley Mobile Estates v. City of Morgan Hill.
Case Number:	United States Supreme Court 03-1571

**5.**

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Authority:	Government Code section 54956.9(a)
Case Name:	Hacienda Valley Mobile Estates v. City of Morgan Hill
Case Number:	Santa Clara Superior Court, Case No. CV 807708

**OPPORTUNITY FOR PUBLIC COMMENT**

Chairman/Mayor Kennedy opened the Closed Session items to public comment. No comment being offered, the public comment was closed.

**ADJOURN TO CLOSED SESSION**

Chairman/Mayor adjourned the meeting to Closed Session at 9:37 P.M.

**RECONVENE**

Chairman/Mayor reconvened the meeting at 11:30 P.M.

**CLOSED SESSION ANNOUNCEMENT**

Agency Counsel/City Attorney Leichter announced there were no reportable actions.

**FUTURE COUNCIL-INITIATED AGENDA ITEMS**

Regarding Item 12: The City Council continued the decision on the Third and Fourth recommended actions of the Implementation Plan of the Library Subcommittee Report to the meeting of July 21, 2004.

Regarding Item 14: The appointment of the 7-member Centennial Planning Committee is to be placed on the agenda for July 21, 2004.

**ADJOURNMENT**

There being no further business, Chairman/Mayor Kennedy adjourned the meeting at 11:32 P.M.

**MINUTES RECORDED AND PREPARED BY:**

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**MOIRA MALONE, DEPUTY AGENCY SECRETARY/DEPUTY CITY CLERK**





## **REDEVELOPMENT AGENCY**

**MEETING DATE:** *July 7, 2004*

**Agenda Item # 18**

**Prepared By:**

**BAHS Analyst**

**Approved By:**

**BAHS Director**

**Submitted By:**

**Executive Director**

### **Morgan Hill Downtown Association (MHDA) 4<sup>th</sup> Quarter Report and Annual Work Plan and Agreement**

#### **RECOMMENDED ACTION(S):**

- 1) Accept 4<sup>th</sup> Quarter Report;
- 2) Review and accept FY 04-05 Annual Work Plan; and,
- 3) Authorize the Executive Director to negotiate and execute an agreement with the Morgan Hill Downtown Association (MHDA) in an amount not to exceed \$97,500, subject to Agency General Counsel approval.

#### **EXECUTIVE SUMMARY:**

Over the past two years, the Agency has funded the operations of the MHDA to implement a Main Street program for downtown. The Agency originally allocated \$250,000 for the MHDA, over a three-year period. Specifically, the Agency approved \$86,000 in FY02-03 and \$80,000 in FY03-04. On May 19<sup>th</sup>, 2004, the MHDA presented its annual year end report as well as a four year funding proposal to the Agency. The MHDA summarized its progress to date and requested a total of \$359,500 over the next four years (FY04-05 thru FY07-08). The Agency discussed the issue, and indicated that funding for FY 04-05 could be increased to \$97,500. Staff had originally budgeted \$70,000 (3<sup>rd</sup> year of funding) for MHDA services. As a condition of the additional funding, MHDA would need to develop a 4-year strategy for becoming more financially self-sufficient, including the possible formation of an assessment district. MHDA proposes to present its 4-year plan to the Agency in the first quarter of FY 04-05. However, they are requesting funding at this time to allow them to continue their operations for FY 04-05 while they are preparing their four-year plan.

Attached is the MHDA 4<sup>th</sup> quarter report for this past year and its Work Plan for FY 04-05. For reference, the MHDA categorizes its scope of activities into the four standing committee's responsibilities (Design, Economic Restructuring, Organization and Promotion). The result is a work plan for each committee, which together, constitute the entire FY 04-05 scope of work for the MHDA. Similarly, the quarterly reports for FY 03-04 are broken out by committee. Overall, staff believes the MHDA has satisfactorily met its scope of work for FY 03-04 and that the proposed work plan for FY 04-05 seems to address the needs of the downtown.

#### **FISCAL IMPACT:**

Sufficient funds exist in the FY 04-05 Business Assistance Programs (317) budget for the requested \$97,500.



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: JULY 7, 2004***

**PUBLIC HEARING AND ADOPTION OF RESOLUTIONS  
CONFIRMING FISCAL YEAR 2004-05 ANNUAL  
ASSESSMENT FOR THE FOX HOLLOW-MURPHY  
SPRINGS ASSESSMENT DISTRICT**

**RECOMMENDED ACTION(S):**

- 1) Open and Close the Public Hearing
- 2) Adopt the attached resolutions confirming the Fiscal Year 2004-05 Annual Assessment for the Fox Hollow/Murphy Springs Assessment District

**EXECUTIVE SUMMARY:** The Fox Hollow-Murphy Springs Assessment District was created to pay for the maintenance of the parks and common area landscaping in new neighborhoods benefiting from the open space. Per Government Code sections 22623 to 22631, an engineer's report is required to set the annual assessments in the District. The Final Engineer's report is attached.

At its June 16, 2004 meeting Council declared its intent to levy assessments in the Fox Hollow/Murphy Springs Assessment District and established the public hearing date set for tonight's meeting. Notice of tonight's public hearing was posted in the newspaper in accordance with State Law.

The district consists of 20 residential sub-areas, affecting a total of 755 lots. Proposed changes in the annual assessments for each sub-area are shown on Exhibit A. It is proposed the assessment rate increase in 3 sub-areas effecting 141 of the 755 property owners. None of the proposed assessment rate increases exceed the maximum rate approved at the time of the sub-area's annexation into the district and therefore, balloting procedures as described in Proposition 218 are not required. All 141 property owners whose assessment rate is proposed to be raised have been notified of tonight's public hearing.

The changes in assessment rates as proposed are necessary to meet current costs for maintenance and to adjust the fund balance or deficit in each sub-area. Staff is managing the District to create or maintain approximately a \$2,000 positive fund balance for each individual sub-area. This fund balance will serve as a contingency for routine maintenance costs for any given fiscal year.

For tonight's public hearing the six resolutions requiring adoption will 1) Amend or approve the Final Engineer's Report for levy of the assessments 2) Order the levy and collection of assessments. These resolutions comply with the Landscaping and Lighting Act of 1972.

**FISCAL IMPACT:** The cost for preparation of this staff report and the engineer's report will be paid for by the Assessment District. It is anticipated that the District will generate **\$137,413** in gross revenues for the Fiscal Year 2004-05 and will offset the costs of maintenance provided.

**Agenda Item # 19**

**Prepared By:**

**Deputy Director Public  
Works/Operations**

**Approved By:**

**Public Works Director**

**Submitted By:**

**City Manager**

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, AMENDING AND/OR APPROVING THE FINAL ANNUAL ENGINEER'S REPORT FOR THE FOX HOLLOW/MURPHY SPRINGS LANDSCAPE MAINTENANCE DISTRICT (EXCLUDING THE CONTE GARDENS AND SANDALWOOD ESTATES ZONES), FISCAL YEAR 2004/2005**

The City Council of the City of Morgan Hill (hereafter referred to as the "City Council") does resolve as follows:

**WHEREAS**, the City Council, pursuant to the provisions of the *Landscape and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500)* (hereafter referred to as the "Act") did by previous Resolution, order the Engineer, NBS, to prepare and file a report in accordance with *Chapter 1 Article 4 of the Act, commencing with Section 22565*, in connection with the proposed levy and collection of assessments for the District known and designated as the Fox Hollow/Murphy Springs Landscape Assessment District (**excluding the Conte Gardens and Sandalwood Estates Zones**) (hereafter referred to as the "District"), for the fiscal year commencing July 1, 2004 and ending June 30, 2005; and,

**WHEREAS**, the Engineer has prepared and filed with the City Clerk of the City of Morgan Hill and the City Clerk has presented to the City Council such report entitled "Fox Hollow/Murphy Springs Landscape Assessment District, 2004/2005 Final Engineer's Report" (hereafter referred to as the "Report"); and,

**WHEREAS**, the City Council has carefully examined and reviewed the Report as presented, and is satisfied with each and all of the items and documents as set forth therein, and finds that the levy has been spread in accordance with the special benefits received from the improvements, operation, maintenance and services to be performed, as set forth in said Report; and,

**NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL FOR THE DISTRICT, AS FOLLOWS:**

**Section 1** That City Council hereby approves the Report as filed.

**PASSED AND ADOPTED** by the City Council of Morgan Hill at a Regular Meeting held on the 7<sup>th</sup> Day of July, 2004 by the following vote.

<b>AYES:</b>	<b>COUNCIL MEMBERS:</b>
<b>NOES:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSTAIN:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSENT:</b>	<b>COUNCIL MEMBERS:</b>

☞ **CERTIFICATION** ☞

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Resolution No. \_\_\_\_\_, adopted by the City Council at a Regular Meeting held on July 7, 2004.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, ORDERING THE LEVY AND COLLECTION OF ASSESSMENTS WITHIN THE FOX HOLLOW/MURPHY SPRINGS LANDSCAPE MAINTENANCE DISTRICT (EXCLUDING THE CONTE GARDENS AND SANDALWOOD ESTATES ZONES), FISCAL YEAR 2004/2005**

The City Council of the City of Morgan Hill (hereafter referred to as the "City Council") does resolve as follows:

**WHEREAS**, the City Council has, by previous Resolutions initiated proceedings, and approved the Final Annual Engineer's Report (hereafter referred to as the "Report") as presented or amended which described the assessments against parcels of land within the Fox Hollow/Murphy Springs Landscape Assessment District (**excluding the Conte Gardens and Sandalwood Estates Zones**) (hereafter referred to as the "District") for the fiscal year commencing July 1, 2004 and ending June 30, 2005; pursuant to the provisions of the *Landscape and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500)* (hereafter referred to as the "Act") to pay the costs and expenses of operating, maintaining and servicing the improvements located within the District; and,

**WHEREAS**, The Engineer selected by the City Council has prepared and filed with the City Clerk, and the City Clerk has presented to the City Council, a Report in connection with the proposed levy and collection upon eligible parcels of land within the District, and the City Council did by previous Resolution approve such Report; and,

**WHEREAS**, the City Council desires to levy and collect assessments against parcels of land within the District for the fiscal year commencing July 1, 2004 and ending June 30, 2005, to pay the costs and expenses of operating, maintaining and servicing the improvements within the District; and,

**WHEREAS**, the Assessment rates within each Zone are exempt from the assessment balloting procedures set forth in Section 4 SEC. 4 of Proposition 218 because the District and Zones were formed by consent of 100% of the land owners, and the proposed Assessments per lot or parcel are not proposed to increase by more than the assessment rates approved by the landowners at the time of annexation into the District; and,

**WHEREAS**, the assessment levies are not based upon the assessed value of the property within the District, but are based upon the special benefit received by the parcels within the District from the improvements; and,

**NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL FOR THE DISTRICT, AS FOLLOWS:**

**Section 1** Following notice duly given, the City Council has held a full and fair Public Hearing regarding its Resolution Approving and or Amending the Final Annual Engineer's Report prepared in connection therewith; the levy and collection of assessments, and considered all oral and written statements, protests and communications made or filed by interested persons.

**Section 2** Based upon its review (and amendments, as applicable) of the Final Annual Engineer's Report, a copy of which has been presented to the City Council and which has been filed with the City Clerk, the City Council hereby finds and determines that:

- i) the land within the District will receive special benefit by the operation, maintenance, and servicing of landscaping and appurtenant facilities within the boundaries of the District.
- ii) The District includes all of the lands receiving such special benefit.
- iii) the net amount to be assessed upon the lands within the District in accordance with the costs for the fiscal year commencing July 1, 2004 and ending June 30, 2005 is apportioned by a formula and method which fairly distributes the net amount among all

eligible parcels in proportion to the estimated special benefit to be received by each parcel from the improvements and services.

**Section 3** The Report and assessment as presented to the City Council and on file in the office of the City Clerk are hereby confirmed as filed.

**Section 4** The City Council hereby orders the proposed improvements to be made, which improvements are briefly described as follows: turf, shrubs, plants and trees, landscaping, irrigation and drainage systems, graffiti removal, and associated appurtenances within the public right-of-ways or specific easements. Maintenance means the furnishing of services and materials for the ordinary and usual maintenance of landscaping and appurtenant facilities, including repair, removal or replacement of all or part of any of the landscaping or appurtenant facilities; providing for the satisfactory working condition, life, growth, health and beauty of the improvements, including cultivation, irrigation, trimming, spraying, fertilization and treating for disease or injury; the removal of trimmings, rubbish, debris and other solid waste. Services provided include furnishing of water and electricity for the irrigation and control of the landscaping, and all necessary service, operations, administration and maintenance required to keep the improvements in a healthy, vigorous and satisfactory condition.

**Section 5** The maintenance, operation and servicing of the landscaping and appurtenant facilities shall be performed pursuant to the Act and the County Auditor of the County of Santa Clara shall enter on the County Assessment Roll opposite each parcel of land the amount of levy, and such levies shall be collected at the same time and in the same manner as the County taxes are collected. After collection by the County, the net amount of the levy shall be paid to the City Treasurer.

**Section 6** The City Treasurer shall deposit all money representing assessments collected by the County of Santa Clara for the District to the credit of a fund for the Fox Hollow/Murphy Springs Landscape Assessment District, and such money shall be expended only for the maintenance, operation and servicing of the landscaping and appurtenant facilities as described in Section 4.

**Section 7** The adoption of this Resolution constitutes the District levy for the Fiscal Year commencing July 1, 2004 and ending June 30, 2005.

**Section 8** The City Clerk is hereby authorized and directed to file the levy with the County Auditor upon adoption of this Resolution.

**Section 9** A certified copy of the levy shall be filed in the office of the City Clerk and open for public inspection.

**PASSED AND ADOPTED** by the City Council of Morgan Hill at a Regular Meeting held on the 7<sup>th</sup> Day of July, 2004 by the following vote.

<b>AYES:</b>	<b>COUNCIL MEMBERS:</b>
<b>NOES:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSTAIN:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSENT:</b>	<b>COUNCIL MEMBERS:</b>

**🔒 CERTIFICATION 🔒**

I, **IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Resolution No. \_\_\_\_\_, adopted by the City Council at a Regular Meeting held on July 7, 2004.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, AMENDING AND/OR APPROVING THE FINAL ANNUAL ENGINEER'S REPORT FOR THE FOX HOLLOW/MURPHY SPRINGS LANDSCAPE MAINTENANCE DISTRICT (REFERRING ONLY TO THE CONTE GARDENS ZONE), FISCAL YEAR 2004/2005**

The City Council of the City of Morgan Hill (hereafter referred to as the "City Council") does resolve as follows:

**WHEREAS**, the City Council, pursuant to the provisions of the *Landscape and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500)* (hereafter referred to as the "Act") did by previous Resolution, order the Engineer, NBS, to prepare and file a report in accordance with *Chapter 1 Article 4 of the Act, commencing with Section 22565*, in connection with the proposed levy and collection of assessments for the District known and designated as the Fox Hollow/Murphy Springs Landscape Assessment District (**referring only to the Conte Gardens Zone**) (hereafter referred to as the "District"), for the fiscal year commencing July 1, 2004 and ending June 30, 2005; and,

**WHEREAS**, the Engineer has prepared and filed with the City Clerk of the City of Morgan Hill and the City Clerk has presented to the City Council such report entitled "Fox Hollow/Murphy Springs Landscape Assessment District, 2004/2005 Final Engineer's Report" (hereafter referred to as the "Report"); and,

**WHEREAS**, the City Council has carefully examined and reviewed the Report as presented, and is satisfied with each and all of the items and documents as set forth therein, and finds that the levy has been spread in accordance with the special benefits received from the improvements, operation, maintenance and services to be performed, as set forth in said Report; and,

**NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL FOR THE DISTRICT, AS FOLLOWS:**

**Section 1** That City Council hereby approves the Report as filed.

**PASSED AND ADOPTED** by the City Council of Morgan Hill at a Regular Meeting held on the 7<sup>th</sup> Day of July, 2004 by the following vote.

<b>AYES:</b>	<b>COUNCIL MEMBERS:</b>
<b>NOES:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSTAIN:</b>	<b>COUNCIL MEMBERS:</b>
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**DATE:** \_\_\_\_\_

\_\_\_\_\_  
IRMA TORREZ, City Clerk

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, ORDERING THE LEVY AND COLLECTION OF ASSESSMENTS WITHIN THE FOX HOLLOW/MURPHY SPRINGS LANDSCAPE MAINTENANCE DISTRICT (REFERRING ONLY TO THE CONTE GARDENS ZONE), FISCAL YEAR 2004/2005**

The City Council of the City of Morgan Hill (hereafter referred to as the "City Council") does resolve as follows:

**WHEREAS**, the City Council has, by previous Resolutions initiated proceedings, and approved the Final Annual Engineer's Report (hereafter referred to as the "Report") as presented or amended which described the assessments against parcels of land within the Fox Hollow/Murphy Springs Landscape Assessment District (**referring only to the Conte Gardens Zone**) (hereafter referred to as the "District") for the fiscal year commencing July 1, 2004 and ending June 30, 2005; pursuant to the provisions of the *Landscape and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500)* (hereafter referred to as the "Act") to pay the costs and expenses of operating, maintaining and servicing the improvements located within the District; and,

**WHEREAS**, The Engineer selected by the City Council has prepared and filed with the City Clerk, and the City Clerk has presented to the City Council, a Report in connection with the proposed levy and collection upon eligible parcels of land within the District, and the City Council did by previous Resolution approve such Report; and,

**WHEREAS**, the City Council desires to levy and collect assessments against parcels of land within the District for the fiscal year commencing July 1, 2004 and ending June 30, 2005, to pay the costs and expenses of operating, maintaining and servicing the improvements within the District; and,

**WHEREAS**, the Assessment rates within each Zone are exempt from the assessment balloting procedures set forth in Section 4 SEC. 4 of Proposition 218 because the District and Zones were formed by consent of 100% of the land owners, and the proposed Assessments per lot or parcel are not proposed to increase by more than the assessment rates approved by the landowners at the time of annexation into the District; and,

**WHEREAS**, the assessment levies are not based upon the assessed value of the property within the District, but are based upon the special benefit received by the parcels within the District from the improvements; and,

**NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL FOR THE DISTRICT, AS FOLLOWS:**

**Section 1** Following notice duly given, the City Council has held a full and fair Public Hearing regarding its Resolution Approving and or Amending the Final Annual Engineer's Report prepared in connection therewith; the levy and collection of assessments, and considered all oral and written statements, protests and communications made or filed by interested persons.

**Section 2** Based upon its review (and amendments, as applicable) of the Final Annual Engineer's Report, a copy of which has been presented to the City Council and which has been filed with the City Clerk, the City Council hereby finds and determines that:

- i) the land within the District will receive special benefit by the operation, maintenance, and servicing of landscaping and appurtenant facilities within the boundaries of the District.
- ii) The District includes all of the lands receiving such special benefit.
- iii) the net amount to be assessed upon the lands within the District in accordance with the costs for the fiscal year commencing July 1, 2004 and ending June 30, 2005 is apportioned by a formula and method which fairly distributes the net amount among all

eligible parcels in proportion to the estimated special benefit to be received by each parcel from the improvements and services.

**Section 3** The Report and assessment as presented to the City Council and on file in the office of the City Clerk are hereby confirmed as filed.

**Section 4** The City Council hereby orders the proposed improvements to be made, which improvements are briefly described as follows: turf, shrubs, plants and trees, landscaping, irrigation and drainage systems, graffiti removal, and associated appurtenances within the public right-of-ways or specific easements. Maintenance means the furnishing of services and materials for the ordinary and usual maintenance of landscaping and appurtenant facilities, including repair, removal or replacement of all or part of any of the landscaping or appurtenant facilities; providing for the satisfactory working condition, life, growth, health and beauty of the improvements, including cultivation, irrigation, trimming, spraying, fertilization and treating for disease or injury; the removal of trimmings, rubbish, debris and other solid waste. Services provided include furnishing of water and electricity for the irrigation and control of the landscaping, and all necessary service, operations, administration and maintenance required to keep the improvements in a healthy, vigorous and satisfactory condition.

**Section 5** The maintenance, operation and servicing of the landscaping and appurtenant facilities shall be performed pursuant to the Act and the County Auditor of the County of Santa Clara shall enter on the County Assessment Roll opposite each parcel of land the amount of levy, and such levies shall be collected at the same time and in the same manner as the County taxes are collected. After collection by the County, the net amount of the levy shall be paid to the City Treasurer.

**Section 6** The City Treasurer shall deposit all money representing assessments collected by the County of Santa Clara for the District to the credit of a fund for the Fox Hollow/Murphy Springs Landscape Assessment District, and such money shall be expended only for the maintenance, operation and servicing of the landscaping and appurtenant facilities as described in Section 4.

**Section 7** The adoption of this Resolution constitutes the District levy for the Fiscal Year commencing July 1, 2004 and ending June 30, 2005.

**Section 8** The City Clerk is hereby authorized and directed to file the levy with the County Auditor upon adoption of this Resolution.

**Section 9** A certified copy of the levy shall be filed in the office of the City Clerk and open for public inspection.

**PASSED AND ADOPTED** by the City Council of Morgan Hill at a Regular Meeting held on the 7<sup>th</sup> Day of July, 2004 by the following vote.

<b>AYES:</b>	<b>COUNCIL MEMBERS:</b>
<b>NOES:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSTAIN:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSENT:</b>	<b>COUNCIL MEMBERS:</b>

**🌹 CERTIFICATION 🌹**

I, **IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Resolution No. \_\_\_\_\_, adopted by the City Council at a Regular Meeting held on July 7, 2004.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, AMENDING AND/OR APPROVING THE FINAL ANNUAL ENGINEER'S REPORT FOR THE FOX HOLLOW/MURPHY SPRINGS LANDSCAPE MAINTENANCE DISTRICT (REFERRING ONLY TO THE SANDALWOOD ESTATES ZONE), FISCAL YEAR 2004/2005**

The City Council of the City of Morgan Hill (hereafter referred to as the "City Council") does resolve as follows:

**WHEREAS**, the City Council, pursuant to the provisions of the *Landscape and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500)* (hereafter referred to as the "Act") did by previous Resolution, order the Engineer, NBS, to prepare and file a report in accordance with *Chapter 1 Article 4 of the Act, commencing with Section 22565*, in connection with the proposed levy and collection of assessments for the District known and designated as the Fox Hollow/Murphy Springs Landscape Assessment District (**referring only to the Sandalwood Estates Zone**) (hereafter referred to as the "District"), for the fiscal year commencing July 1, 2004 and ending June 30, 2005; and,

**WHEREAS**, the Engineer has prepared and filed with the City Clerk of the City of Morgan Hill and the City Clerk has presented to the City Council such report entitled "Fox Hollow/Murphy Springs Landscape Assessment District, 2004/05 Final Engineer's Report" (hereafter referred to as the "Report"); and,

**WHEREAS**, the City Council has carefully examined and reviewed the Report as presented, and is satisfied with each and all of the items and documents as set forth therein, and finds that the levy has been spread in accordance with the special benefits received from the improvements, operation, maintenance and services to be performed, as set forth in said Report; and,

**NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL FOR THE DISTRICT, AS FOLLOWS:**

**Section 1** That City Council hereby approves the Report as filed.

**PASSED AND ADOPTED** by the City Council of Morgan Hill at a Regular Meeting held on the 7<sup>th</sup> Day of July, 2004 by the following vote.

<b>AYES:</b>	<b>COUNCIL MEMBERS:</b>
<b>NOES:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSTAIN:</b>	<b>COUNCIL MEMBERS:</b>
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**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Resolution No. \_\_\_\_\_, adopted by the City Council at a Regular Meeting held on July 7, 2004.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, ORDERING THE LEVY AND COLLECTION OF ASSESSMENTS WITHIN THE FOX HOLLOW/MURPHY SPRINGS LANDSCAPE MAINTENANCE DISTRICT (REFERRING ONLY TO THE SANDALWOOD ESTATES ZONE), FISCAL YEAR 2004/2005**

The City Council of the City of Morgan Hill (hereafter referred to as the "City Council") does resolve as follows:

**WHEREAS**, the City Council has, by previous Resolutions initiated proceedings, and approved the Final Annual Engineer's Report (hereafter referred to as the "Report") as presented or amended which described the assessments against parcels of land within the Fox Hollow/Murphy Springs Landscape Assessment District (**referring only to the Sandalwood Estates Zone**) (hereafter referred to as the "District") for the fiscal year commencing July 1, 2004 and ending June 30, 2005; pursuant to the provisions of the *Landscape and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500)* (hereafter referred to as the "Act") to pay the costs and expenses of operating, maintaining and servicing the improvements located within the District; and,

**WHEREAS**, The Engineer selected by the City Council has prepared and filed with the City Clerk, and the City Clerk has presented to the City Council, a Report in connection with the proposed levy and collection upon eligible parcels of land within the District, and the City Council did by previous Resolution approve such Report; and,

**WHEREAS**, the City Council desires to levy and collect assessments against parcels of land within the District for the fiscal year commencing July 1, 2004 and ending June 30, 2005, to pay the costs and expenses of operating, maintaining and servicing the improvements within the District; and,

**WHEREAS**, the Assessment rates within each Zone are exempt from the assessment balloting procedures set forth in Section 4 SEC. 4 of Proposition 218 because the District and Zones were formed by consent of 100% of the land owners, and the proposed Assessments per lot or parcel are not proposed to increase by more than the assessment rates approved by the landowners at the time of annexation into the District; and,

**WHEREAS**, the assessment levies are not based upon the assessed value of the property within the District, but are based upon the special benefit received by the parcels within the District from the improvements; and,

**NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL FOR THE DISTRICT, AS FOLLOWS:**

**Section 1** Following notice duly given, the City Council has held a full and fair Public Hearing regarding its Resolution Approving and or Amending the Final Annual Engineer's Report prepared in connection therewith; the levy and collection of assessments, and considered all oral and written statements, protests and communications made or filed by interested persons.

**Section 2** Based upon its review (and amendments, as applicable) of the Final Annual Engineer's Report, a copy of which has been presented to the City Council and which has been filed with the City Clerk, the City Council hereby finds and determines that:

- i) the land within the District will receive special benefit by the operation, maintenance, and servicing of landscaping and appurtenant facilities within the boundaries of the District.
- ii) The District includes all of the lands receiving such special benefit.
- iii) the net amount to be assessed upon the lands within the District in accordance with the costs for the fiscal year commencing July 1, 2004 and ending June 30, 2005 is apportioned by a formula and method which fairly distributes the net amount among all

eligible parcels in proportion to the estimated special benefit to be received by each parcel from the improvements and services.

**Section 3** The Report and assessment as presented to the City Council and on file in the office of the City Clerk are hereby confirmed as filed.

**Section 4** The City Council hereby orders the proposed improvements to be made, which improvements are briefly described as follows: turf, shrubs, plants and trees, landscaping, irrigation and drainage systems, graffiti removal, and associated appurtenances within the public right-of-ways or specific easements. Maintenance means the furnishing of services and materials for the ordinary and usual maintenance of landscaping and appurtenant facilities, including repair, removal or replacement of all or part of any of the landscaping or appurtenant facilities; providing for the satisfactory working condition, life, growth, health and beauty of the improvements, including cultivation, irrigation, trimming, spraying, fertilization and treating for disease or injury; the removal of trimmings, rubbish, debris and other solid waste. Services provided include furnishing of water and electricity for the irrigation and control of the landscaping, and all necessary service, operations, administration and maintenance required to keep the improvements in a healthy, vigorous and satisfactory condition.

**Section 5** The maintenance, operation and servicing of the landscaping and appurtenant facilities shall be performed pursuant to the Act and the County Auditor of the County of Santa Clara shall enter on the County Assessment Roll opposite each parcel of land the amount of levy, and such levies shall be collected at the same time and in the same manner as the County taxes are collected. After collection by the County, the net amount of the levy shall be paid to the City Treasurer.

**Section 6** The City Treasurer shall deposit all money representing assessments collected by the County of Santa Clara for the District to the credit of a fund for the Fox Hollow/Murphy Springs Landscape Assessment District, and such money shall be expended only for the maintenance, operation and servicing of the landscaping and appurtenant facilities as described in Section 4.

**Section 7** The adoption of this Resolution constitutes the District levy for the Fiscal Year commencing July 1, 2004 and ending June 30, 2005.

**Section 8** The City Clerk is hereby authorized and directed to file the levy with the County Auditor upon adoption of this Resolution.

**Section 9** A certified copy of the levy shall be filed in the office of the City Clerk and open for public inspection.

**PASSED AND ADOPTED** by the City Council of Morgan Hill at a Regular Meeting held on the 7<sup>th</sup> Day of July, 2004 by the following vote.

<b>AYES:</b>	<b>COUNCIL MEMBERS:</b>
<b>NOES:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSTAIN:</b>	<b>COUNCIL MEMBERS:</b>
<b>ABSENT:</b>	<b>COUNCIL MEMBERS:</b>

**🌹 CERTIFICATION 🌹**

I, **IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Resolution No. \_\_\_\_\_, adopted by the City Council at a Regular Meeting held on July 7, 2004.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: JULY 7, 2004***

### **TITLE: DEVELOPMENT AGREEMENT AMENDMENT, DAA-98-11: SPRING-MALONE/FILIPOWICZ**

#### **RECOMMENDED ACTION(S):**

1. Open/Close the Public Hearing
2. Waive the First and Second Reading of Ordinance
3. Introduce Ordinance

**EXECUTIVE SUMMARY:** The applicant is requesting a Development Agreement Amendment (DAA) for one of the twenty-one building allotments for the Spring Manor Project, located on the south side of Spring Avenue, adjacent to the west side of Mt. Hope Cemetery. The applicant is requesting an additional one year (June 30, 2005) to commence construction of this home.

Pursuant to the City Council's RDCS Implementation policies, the building allotment for a custom lot extends two years beyond the time limit for the developer-built homes. Therefore, this custom lot should commence construction by June 30, 2004. The applicant is requesting a development agreement amendment to allow a one-year extension of time.

Under Section 18.78.125G of the Municipal Code, the City Council may grant a DAA if it finds that the cause for the lack of commencement was the City's failure to grant a building permit for the project due to extended delays in the environmental reviews, permit delays not the result of developer inaction, or allocation appeals processing. Construction of the custom home has been delayed due to a downturn in the economy and general confusion of the building allotment time limits. The applicant's letter of justification for the DAA is attached. Given that this is the last lot in this subdivision to be completed, the Planning Commission supported the extension of time request. The potential buyer of this custom lot advised the Planning Commission that a home could be constructed on the lot within the one-year extension. Purchase of the custom lot by the potential home builder is contingent upon receiving extension of time on the building allotment.

The Planning Commission reviewed the DAA application at their June 8, 2004 meeting and voted 6-0, with one Commissioner absent, recommending approval to the Council. A copy of the Commission's staff report and minutes are attached for the Council's reference.

**FISCAL IMPACT:** None. Filing fees were paid to the City to cover the cost of processing this application.

**Agenda Item # 20**

**Prepared By:**

**Planning Intern**

**Approved By:**

**Planning Manager**

**Submitted By:**

**City Manager**

## **ORDINANCE NO.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1487, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-97-22: SPRING – MALONE/FILIPOWICZ TO ALLOW FOR A ONE YEAR EXTENSION OF TIME FOR A SINGLE CUSTOM LOT BUILDING ALLOTMENT RECEIVED IN THE 1998-99 RDCS COMPETITION. (APN 767-53-012)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

**SECTION 2.** The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

**SECTION 3.** the Planning Commission pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code, awarded 6 building allotments for FY 1999-2000 to application **MP-97-22: Spring-Malone**; and

**SECTION 4.** The City Council hereby finds that the development agreement amendment approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

**SECTION 5. EXCEPTION TO LOSS OF BUILDING ALLOCATION.** The project applicant has, in a timely manner, submitted necessary planning applications to pursue development. Based on the findings required in Section 18.78.125 of the Municipal Code, the City Council hereby approves the development agreement amendment to allow for a one-year Exception of Loss of Building Allotment for the single Measure P unit, extending the deadline to commence construction from June 30, 2004 to June 30, 2005.

**SECTION 6.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 7.** Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 7<sup>th</sup> Day of July 2004, and was finally adopted at a regular

meeting of said Council on the 21<sup>st</sup> Day of July 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES: COUNCIL MEMBERS:**  
**NOES: COUNCIL MEMBERS:**  
**ABSTAIN: COUNCIL MEMBERS:**  
**ABSENT: COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**Irma Torrez, City Clerk**

\_\_\_\_\_  
**Dennis Kennedy, Mayor**

**∞ CERTIFICATE OF THE CITY CLERK ∞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. \_\_\_\_\_, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 21<sup>st</sup> Day of July 2004.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**



## ***CITY COUNCIL STAFF REPORT***

***MEETING DATE: JULY 7, 2004***

**Agenda Item # 21**

**Prepared By:**

**Associate Planner**

**Approved By:**

**Planning Manager**

**Submitted By:**

**City Manager**

### **DAA-03-11: SAN PEDRO-DICONZA**

#### **RECOMMENDED ACTION(S):**

1. Open/Close Public Hearing
2. Waive the First and Second reading of Development Agreement Ordinance
3. Introduce Development Agreement Ordinance (roll call vote)

**EXECUTIVE SUMMARY:** The applicant is requesting to amend the development agreement to include eight additional supplement allocations for Fiscal Year (FY) 2004-2005 and to move up eight allocations from FY 2006-2007 to FY 2005-06 for the San Pedro Villas project located at the northeast corner of Butterfield Blvd. and San Pedro Avenue.

In May 2003, the San Pedro Villas project received a residential building allotment for nine units for FY 2004-2005, seven units for FY 2005-2006, and eight units for FY 2006-2007. The Commission approved the tentative subdivision map for 24 lots January 2004 and the Council approved the Development Agreement for 24 units March 2004.

In March, the Planning Commission completed a supplemental RDCS distribution, allocated the applicant eight additional units for FY 2004-2005, and moved up the eight allocations for FY 2006-2007 to FY 2005-2006. Now, the project has 17 allocations for FY 2004-2005 and 15 allocations for FY 2005-2006. The applicant is amending the development agreement to reflect the changes in the allocations and the phasing of the project. The project will now be built in two phases, as opposed to four phases as previously proposed.

Project development agreements are required as a formal contract between the developer and the City. The development agreement formalizes the commitments made during the Measure P process and the development schedule for the project. The development agreement for 32 allotments awarded in the 2002 competition has been completed and is attached as Exhibit A. The 2002 Measure P commitments and the amended processing schedule have been included within the agreement.

The application was reviewed by the Planning Commission at their June 8 meeting, at which time the Commission voted 6-0 to recommend approval of the proposed development agreement as prepared. The Planning Commission staff report and minutes are attached for Council's reference.

**FISCAL IMPACT:** None. Filing fees were paid to the City to cover processing of this application. R:\PLANNING\WP51\Land Agreements\DA\2003\DA03-11\DAA0311\DAA0311.m1c.doc

**ORDINANCE NO.       , NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO DEVELOPMENT AGREEMENT, DA 03-11 TO INCORPORATE CHANGES IN THE ALLOCATIONS AND THE PHASING OF THE PROJECT FOR APPLICATION MP 02-07: CORY-SAN PEDRO PARTNERS. (APN 817-11-061)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

**SECTION 2.** The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

**SECTION 3.** The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code, Resolution No. 03-17a & b, adopted May 27, 2003, and Resolution No. 04-35 and 04-36 adopted March 23, 2004 has awarded allotments to that certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP 02-07: Cory-San Pedro Partners	32 Single-Family Homes

**SECTION 4.** References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

**SECTION 5.** The City Council hereby finds that the Residential Development Agreement and Development Proposal approved by this ordinance are compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

**SECTION 6.** Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

**SECTION 7.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.



**SECTION 8.** Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 7<sup>th</sup> Day of July 2004, and was finally adopted at a regular meeting of said Council on the 21<sup>st</sup> Day of July 2004, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES:            COUNCIL MEMBERS:**  
**NOES:           COUNCIL MEMBERS:**  
**ABSTAIN:       COUNCIL MEMBERS:**  
**ABSENT:        COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Irma Torrez, City Clerk

\_\_\_\_\_  
Dennis Kennedy, Mayor

**∞   CERTIFICATE OF THE CITY CLERK   ∞**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 21<sup>st</sup> Day of July 2004.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**